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### Blue-Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers

Lisa G. Lerman

*The Catholic University of America, Columbus School of Law*

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# Blue-Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers

LISA G. LERMAN\*

*... And lead us not into temptation, But deliver us from evil.*<sup>1</sup>

*Where . . . were the outside accountants and attorneys when these transactions were effectuated? What is difficult to understand is that with all the professional talent involved . . . why at least one professional would not have blown the whistle to stop the overreaching that took place in this case*<sup>2</sup>

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1. *The Lord's Prayer*, in THE NEW ENCYCLOPAEDIA BRITANNICA, Micropaedia, Vol. 7, 478 (15th ed. 1995).

2. Federal Judge Stanley Sporkin asked these questions about how the massive fraud that was committed by Lincoln Savings and Loan could have occurred, given the number of lawyers and accountants who were advising the bank. See discussion in DAVID O. FRIEDRICHS, TRUSTED CRIMINALS: WHITE COLLAR CRIME IN CONTEMPORARY SOCIETY 294 (1996), quoting M.D. Monse, *Ethical Issues in Representing Thrifts*, 40 BUFF. L. REV. 1, 4-5 (1992).

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## I. INTRODUCTION

In recent years, a disturbing number of well-respected lawyers in large established firms have been caught stealing large amounts of money from their clients and their partners by padding, manipulating and fabricating time sheets and expense vouchers.<sup>3</sup> Some have gone to prison, been disbarred, and/or been fired.<sup>4</sup> Others have escaped prosecution or discipline.<sup>5</sup> It used to be that lawyers inclined to steal from their clients wrote checks to themselves from their client trust accounts without client authorization and without having earned the money. Trust account fraud still occurs, but in recent years, theft from clients and from partners through billing and expense fraud has become more common and more pervasive.

Billing fraud takes many different forms. Here are some examples:

- Some lawyers are just sloppy about keeping time records.
- Some systematically “pad” timesheets, or bill one client for work done for another.
- Some create entirely fictitious timesheets.
- Some record hours based on work done by other lawyers, paralegals or secretaries, representing that they did the work. This may result in nonbillable time being billed, or in work being billed at a rate higher than that of the person who actually did the work.
- Some lawyers bill for time that their clients might not regard as legitimately billable—for schmoozing with other lawyers, chatting with clients about sports or families, for doing administrative work that could be done by a non-lawyer, or for thinking about a case while mowing the lawn or watching television.

The methods of expense fraud are equally diverse; the lawyers who engage in expense fraud may be stealing from their clients or their partners or both.

- Some lawyers represent personal expenses to be business expenses. Some limit themselves to requesting reimbursement for personal expenses that have a “nexus” to the work, such as a daily massage while in litigation, or buying a new suit while on travel. Others bill clients for extravagant gifts and vacations regardless of whether there is a work nexus.
- Some “doctor” receipts for legitimate expenses to increase the amounts claimed, or manufacture receipts for expenses that were not in fact incurred.
- Some lawyers — being “fair” to their clients, represent legitimately billable time as reimbursable expenses, so that the payment of that amount from the client goes directly to the lawyer as reimbursement rather than being paid to the firm as a fee. Since this income to the lawyer is represented as reimbursement

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3. See *infra* section I-A.

4. See *infra* sections VII, IX.

5. See *id.*

of expenses, it is unlikely to be reported as income, so this maneuver also may involve tax fraud.

Billing fraud is far more difficult to detect than expense fraud, unless the lawyer is reckless enough to bill more than twenty-four hours per day. But regulation of this type of conduct is very difficult because no one except the lawyer really knows how much time was spent and how much was billed. Because this arena involves such a wide degree of personal discretion, those tempted to cheat may perceive, quite accurately, that the odds of apprehension are close to zero. Nevertheless, some lawyers are being investigated, disciplined, and prosecuted, so the problem is beginning to surface and a body of law on billing fraud is developing.

This study of these recent cases of billing and expense fraud confirms the views of David Wilkins, Ted Schneyer, and many other scholars that the disciplinary system performs only one of several needed regulatory functions.<sup>6</sup> The cases demonstrate the need for public and private regulatory responses that not only receive and investigate complaints, but also provide education, prevention, proactive monitoring, and remediation. Lawyers who engage in billing and expense fraud should be fired, disbarred, prosecuted on criminal charges, sued for malpractice. If the public and private organizations that can attend to this problem take it seriously, the norms in the legal profession might shift to require that lawyers be candid and truthful in billing clients.

#### A. SIXTEEN CASES

I undertook the research for this article because in recent years, I periodically noticed reports of cases of elite lawyers who had gone to jail, been disbarred, or been investigated for stealing by billing and expense fraud. I had not previously seen such reports of prosecution or disbarment of senior partners in major law firms. In my research, I sought to identify as many cases as possible involving billing or expense fraud involving prominent lawyers and large amounts of money. I found almost no cases of this sort prior to 1989 (and none involving

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6. See generally David Wilkins, *Who Should Regulate Lawyers*, 105 HARV. L. REV. 801 (1992) (reporting that during the 1980s new systems developed for regulation of lawyers beyond the bar disciplinary agencies, and urging that this multi-faceted regulatory system is useful and necessary to an independent legal profession); Ted Schneyer, *Professional Discipline for Law Firms?*, 77 CORNELL L. REV. 1 (1991) [hereinafter Schneyer, *Professional Discipline*] (urging expansion of the jurisdiction of disciplinary agencies to allow discipline of law firms as well as individual lawyers); Anthony E. Davis, *Professional Liability Insurers as Regulators of Law Practice*, 65 FORDHAM L. REV. 209 (1996); Bruce A. Green, *Conflicts of Interest in Litigation: The Judicial Role*, 65 FORDHAM L. REV. 71 (1996); Rhode, Deborah L. Rhode, *Institutionalizing Ethics*, 44 CASE W.L. REV. 665 (1994) (urging that the "fuller realization of professional ideals" will require changes in regulatory structures, such as admissions, discipline and judicial oversight, market initiatives to increase competition among lawyers, and educational initiatives in law schools, law firms, and bar associations); Susan P. Koniak, *The Law Between the Bar and the State*, 70 N.C. L. REV. 1389 (1992); Deborah L. Rhode, *The Rhetoric of Professional Reform*, 45 MD. L. REV. 274 (1986) (identifying the dangers posed by self-regulation through the disciplinary system, and urging the need for expansion of regulatory structures that govern lawyers).

lawyers at "elite" firms (large firms or spin-offs from large firms), and after 1989 I found thirty-six such cases.<sup>7</sup> I had hoped to find some earlier cases so that I could track the development of the problem or the enforcement efforts. Instead it was as if I had stepped through a looking glass. On one side, the problem appears not to exist. On the other, there is a striking pattern of cases. I suggest that this type of misconduct occurred before 1989, but that in the late 1980s the incidence and/or prosecution of billing and expense fraud increased.<sup>8</sup>

From the thirty-six, I selected sixteen cases for more intensive study.<sup>9</sup> These sixteen cases involve lawyers who came from privileged backgrounds, attended elite schools, and have been mentored and trained at some of the most respected law firms in the United States. Some of the cases on the "B" list involved proven theft below \$100,000,<sup>10</sup> lawyers at smaller firms, or associates at large firms. To be eligible for a place on the short list a lawyer must have:

- been a managing partner, a member of the executive committee or a rainmaker at a large, respected law firm or a spin-off from such a firm;<sup>11</sup>
- been publicly accused of stealing over \$100,000 from clients or from his or her law firm by fraudulent representations as to hours worked or expenses incurred;
- been jailed and/or disbarred for billing or expense fraud.<sup>12</sup>

These lawyers engaged in patterns of fraud that went on for an average of five years. Their collective total proven or admitted theft is about \$16 million. These highly educated successful lawyers were at the pinnacle of the profession. In

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7. Thirty-five of the 37 cases occurred or became public during or after 1989. Thomas Schneider's misconduct occurred in 1981 and was reported prior to 1986. See *In Re Schneider*, 553 A.2d 206, 206-208 (D.C. 1989). Gary Nothstein's billing fraud occurred between 1980 and 1982, and was reported shortly thereafter. Nothstein's case was made public again in 1995, however, when Nothstein committed suicide after changing his name to Notestein and misrepresenting himself as a recent Georgetown University Law Center graduate in order to obtain a position as a first-year associate at Shaw, Pittman, Pitts & Trowbridge in Washington, D.C. See Paul Duggan, *Lawyer Used Own Gun, Police Say; Suicide May Have Left Cards to Aid in His ID*, WASH. POST, July 26, 1995, at B3.

8. See *infra* section II.

9. A table presenting information about the other twenty cases in the sample of thirty-six appears as Appendix A.

10. For example, Glenn Nadell, who was the head of the tax department at the Chicago law firm of Katten, Muchin & Zavis, who resigned from the firm in February 1995 after an internal investigation, revealed that he has billed less than \$50,000 in false or inflated expenses to clients over a period of three years. Nadell's partner Al Muchin commented of the incident: "It's . . . silly." Karen Dillon, *Katten Partner Resigns after Alleged Overbilling*, AM. LAW., Apr. 1995, at 13.

11. Eleven of the firms are among the 250 largest law firms in the country, according to the *Annual Survey of the Nation's Largest Law Firms*, NAT'L L.J., Sept. 30, 1996, at C25. Of the four that are not on this list, one is defunct and the other three are among the 1,000 largest US firms. *The US Business Litigation: 1,000 Largest US Law Firms*, CORP. LEGAL TIMES, Sept. 1996, at 14.

12. While proceedings are still in progress in a few cases, all of the sixteen lawyers have either been suspended or disbarred.

many of the cases it is clear that their partners knew about and/or participated in the billing fraud.<sup>13</sup>

Table 1 introduces the sixteen cases whose comparative study is the central focus of this article. The table shows what law schools the lawyers attended and when they graduated,<sup>14</sup> where they worked when they were discovered to be engaged in billing and expense fraud, the position of each lawyer when the billing fraud was discovered, the amounts that were (variously) alleged, admitted, or proven to have been stolen by the lawyers, the periods of time during which the misconduct occurred, the prison sentences imposed on those who were prosecuted, and the sanctions that were imposed by lawyer disciplinary agencies.

TABLE 1  
AN INTRODUCTION TO THE CASES

	Name, Law School Where Lawyer Earned JD & Year	Firm Where Misconduct Occurred, Position	Alleged Amount Stolen and Dates Alleged <sup>15</sup>	Prison Sentence (Months) & Year Imposed	Discipline or Resignation
1	Edward S. Digges, Jr., Maryland '71	Digges, Wharton and Levin, <sup>16</sup> Annapolis, MD, managing partner	\$3.1M 1994-1989 (Dresser)	30 1989-90 (Groner 91)	disbarred MD & US Sup.Ct. 1990

13. The judge who heard the disciplinary action against Stanford Hess, for example, found that "other senior members of Weinberg and Green knew about the fraudulent billing scheme and allowed it to continue;" the judge found their conduct "reprehensible" but found that the partner's knowledge did not "vitiate the respondent's culpability nor . . . minimize his responsibility for his conduct." Attorney Grievance Comm'n v. Hess, Case No. 97301053, Findings of Fact and Conclusions of Law 12 (Circuit Court for Baltimore City, June 2, 1998).

14. I present some contextual information without any direct causal or explanatory connection to the billing and expense fraud. I include background information about the lawyers, for example, because these lawyers' education and professional accomplishment places them at the top of their profession.

15. I have ranked the lawyers by the amounts of money that they admitted, were alleged or proven to have stolen from their clients and partners.

16. Before Mr. Digges started the firm of Digges, Wharton and Levin, he was managing partner at the law firm of Piper and Marbury.

	Name, Law School Where Lawyer Earned JD & Year	Firm Where Misconduct Occurred, Position	Alleged Amount Stolen and Dates Alleged <sup>15</sup>	Prison Sentence (Months) & Year Imposed	Discipline or Resignation
2	Harvey Myerson; Columbia '64	Myerson & Kuhn, <sup>17</sup> New York, managing partner	\$2.5M 1980-1989 (Jensen 92a, US v. Myerson)	70 1992 (Lubasch 92b)	disbarred New York 1998 (Discipline)
3	Wilkes "Skip" Morgan, Hastings '73	Bronson, Bronson & McKinnon, Santa Rosa office, managing partner	\$2.3M 1984-1991 <sup>18</sup> (Osborne 92)	24-30 1994 ("Faked" 95)	resigned CA 1992 (Re Morgan)
4	H. Lawrence Fox, Virginia '64	Winston & Strawn, DC office, managing partner	\$1.62M 1986-1991 (Groner 92)	55 no parole 1992 (Ex-Lawyer 92)	disbarred US S. Ct. 1992; disbarred VA 1992 and DC 1993 (Re Fox 92, 93)
5	Maureen Walsh, <sup>19</sup> Northwestern '80	Chapman & Cutler, Chicago, non-equity partner	\$1.48M <sup>20</sup> 1991-1994 (Petition)	12 1997 (Jackson 97)	interim suspension ordered 11/97 (Man-son)

17. Before he started the law firm of Myerson & Kuhn, Mr. Myerson was managing partner and head of the litigation department at Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey.

18. In an arbitration proceeding against its insurer, Bronson, Bronson & McKinnon claimed that Morgan had stolen \$3.5 million from the firm and its clients. Barbara Steuart, *Bronson Wins \$984,000 From Insurer in Embezzlement Case*, THE RECORDER, Oct. 28, 1994, at 3.

19. Maureen Walsh Fairchild is married to Gary Fairchild. They were partners at two different Chicago law firms. Each engaged in substantial independent billing fraud, and also committed some billing fraud in collaboration with one another. The disciplinary complaint used her maiden name. John Flynn Rooney, *Fairchild Would Tell All About Acts at Firm*, CHI. DAILY L. BULL., Oct. 8, 1996, at 1. The criminal indictment refers to her as "Maureen Walsh Fairchild." In this Article I refer to her as Maureen Walsh. Because I often refer to the lawyers discussed by their last names, the use of her maiden name reduces the possibility of confusion between Maureen Walsh Fairchild and Gary Fairchild.

20. Maureen Walsh was charged by the disciplinary agency in Chicago with having overbilled clients and her law firm by \$1.48 million. The subsequent criminal indictment charged her with mail and wire fraud of

	Name, Law School Where Lawyer Earned JD & Year	Firm Where Misconduct Occurred, Position	Alleged Amount Stolen and Dates Alleged <sup>15</sup>	Prison Sentence (Months) & Year Imposed	Discipline or Resignation
6	William F. Duker, Yale '81	Duker, Barrett, Gravante & Markel, New York, managing partner	\$1.4M 1990-1995 (Walsh 97)	33 1997 (Weiser)	disbarred New York 9/24/97 (Re Duker 97); disbarred DC 5/98 (Ethics Log)
7	William Appler, Georgetown '69	McDermott, Will & Emery, DC, non-equity partner	\$1.1M 1986-1991 (Re Appler)	not prosecuted	disbarred DC 1995 (Re Appler)
8	Gary Fairchild, Northwestern '69	Winston & Strawn, Chicago, managing partner	\$784T 1984-1994 (Re Fairchild)	24 1995 (O'Connor 95); 3 yrs. Suspended (Petition 97)	voluntary disbarment IL 1994 (order of Disciplinary Commission)
9	Michael X. Morrell, Georgetown '68	Akin, Gump, Strauss, Hauer & Feld, DC, of counsel	\$500T 1985-1990 (Torry 95)	none reported in press	disbarred DC 1996 (Re Morrell)
10	Webster Hubbell, Arkansas '73	The Rose Law Firm, Little Rock, managing partner	\$482T 1989-1994 (Information)	21 1994 (Reske 95)	disbarred by consent AK 1995 (Re Hubbell)

\$900,000. The discrepancy between these two amounts was not explained. *In re* Walsh, No. 94-CH-653, Petition Pursuant to Illinois Supreme Court Rule 761 (Ill. 1997).

	Name, Law School Where Lawyer Earned JD & Year	Firm Where Misconduct Occurred, Position	Alleged Amount Stolen and Dates Alleged <sup>15</sup>	Prison Sentence (Months) & Year Imposed	Discipline or Resignation
11	James T. Crowley, Michigan '68	Thompson, Hine and Flory, Cleveland, partner, chairman of litigation dept.	\$385T 1990-1992; one incident in 1987 (Re Crowley)	none reported in press	suspended indefinitely Ohio 1994 (Re Crowley)
12	Timothy Flato, USC '81	Latham & Watkins, San Francisco, partner, head of project finance group (Mintz 96b)	\$300-400T; 1991-1994 (Crawford 96b; Mintz 96c)	6 months home detention 1996 (Mintz 96c)	resigned CA 1996 (Re Flato)
13	Richard Salomon, Harvard '79	Mayer, Brown & Platt, Chicago, partner	\$254T <sup>21</sup> 1990-1994 <sup>22</sup> (Re Salomon)	none reported in press	disbarred by consent IL 1994 (Re Salomon)
14	Sherman F. Taub, New York Law School '71	Tenzer, Greenblatt, Fallon & Kaplan, New York, tax partner	\$225T 1991-1994 <sup>23</sup> (Notice of Charges)	none reported in press	resigned New York 1996 (Re Taub)

21. This amount is taken from the Illinois Supreme Court opinion disbaring Richard Salomon. It includes amounts attributable to billing and expense fraud, but does not include amounts attributable to referral and service fees paid directly to Salomon which should have been paid to the firm. The \$254,000 includes: \$36,905.75 in inflated billings to the Chrysler Corp., \$214,063.42 in mischaracterized expenses on bills to twelve clients, designed to secure payment for expenses in violation of client policies, and \$3,089.21 in personal or other telephone calls improperly billed to the firm. *In re Salomon*, MR 10420 (Ill. S. Ct., Sept. 23, 1994).

22. This time period reflects billing misconduct only. Salomon also falsely represented on his resume and in other biographical data from 1986 to 1994 that he graduated *magna cum laude* from Harvard Law School. *Id.*

23. Although the Notice of Charges filed by the Disciplinary Agency indicates that Taub's misconduct occurred "during Taub's employment at Tenzer, Greenblatt," the bulk of the fraud appears to have occurred

	Name, Law School Where Lawyer Earned JD & Year	Firm Where Misconduct Occurred, Position	Alleged Amount Stolen and Dates Alleged <sup>15</sup>	Prison Sentence (Months) & Year Imposed	Discipline or Resignation
15	Stanford Hess, Maryland '66	Weinberg & Green, Baltimore, partner	\$110T <sup>24</sup> 1984-1987 (James 95a)	none reported in press	suspended for three years MD 1999 (Opinion)
16	Scott J. McKay Wolas Fordham '76	Hunton & Williams, partner, head of litigation dept. in NY office	unknown <sup>25</sup> approximately 1991-1995 (Vorobil 96)	criminal investigation pending	suspended New York 11/97 (Discipline)

Most but not all of the lawyers were in senior positions in their firms. Seven were managing partners, five of the main offices of their firms, and two of branch offices. Three others were the heads of departments or practice groups in their firms. Of the other six, three were equity partners, two were non-equity partners, and one was of counsel. Those who were in less senior positions were included in the sample because they had established themselves in stable positions at very large firms and generated significant income.

Two of the lawyers were managing partners at small law firms that had spun off from large prominent law firms; both had been managing partners of the large firms before they formed their own firms.<sup>26</sup> These lawyers took some of their clients with them when they created their own firms.

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between the years of 1991 and 1994. *In re* Taub, HP No. 34/95, Statement of Charges, (Sup. Ct. N. Y. App. Div., Aug. 14, 1995).

24. The amount alleged to have been added to the bills through the computerized padding scheme was \$110,000, but the firm repaid the bank \$475,000, which was represented as compensation for the bill-padding and its consequences. Also the pleadings on billing fraud alleged that other clients had been overbilled as well. Michael James, *Bank Says Top Law Firm Padded Bills*, BALTIMORE SUN, April 27, 1995, at A1; Harvey Berkman, *He Balked at Bills, So Firm Padded Them*, NAT'L L. J., Oct. 2, 1995, at A10.

25. The amount of Wolas' billing fraud is unknown. It is estimated that he stole between \$40 million and \$100 million through the Ponzi scheme.

26. Harvey Myerson was managing partner of Myerson & Kuhn; Ed Digges was managing partner of Piper & Marbury.



## B. HOW THE ARTICLE IS ORGANIZED

This article endeavors to answer the following sets of questions:

- What changes in the legal profession have produced a professional environment in which senior partners in law firms slide into stealing from their partners and their clients?<sup>27</sup>
- How widespread and serious is the problem of billing and expense fraud? Are these isolated instances of “bad apples”? Or does the pattern of recent billing fraud cases at elite law firms represent the “tip of an iceberg” in the legal profession?<sup>28</sup> How many other managing partners and rainmakers are engaged in chronic theft from their clients and their partners?<sup>29</sup>
- Can we make sense of these cases by study of the professional histories of the lawyers or their firms, or not?<sup>30</sup>
- What kinds of misconduct were involved in these cases? How did the lawyers accomplish the billing and/or expense fraud, and what did they do with money they amassed? The lawyers were charged with, proven to have stolen, or admitted stealing hundreds of thousands or millions of dollars. Do the public reports reveal the true scope of the misconduct, or did they steal much more than the amounts alleged?<sup>31</sup>
- Why did these lawyers misappropriate funds through padding or manipulation of time sheets or expense reports? Is it that some lawyers will stop at nothing in the quest for wealth and status? Do the lawyers’ personal and family backgrounds show a dearth of moral compass? Were some of them mentally ill? How did they explain their misconduct once confronted with it?<sup>32</sup>
- Where were the lawyer regulators? Why didn’t the regulatory system prevent these fiduciary fiascos? Once these situations came to light, how effective or consistent were the disciplinary agencies and the prosecutors in responding to these cases?<sup>33</sup>
- What can we observe about the law firms’ behavior in responding to these cases of billing and expense fraud? How did these cases come to light? When complaints were made within the firms about the lawyers’ misconduct, did the firms investigate and report the misconduct? How did it happen that many of

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27. See *infra* section II.

28. See *infra* section III.

29. See *id.*

30. See *infra* section IV.

31. See *infra* section V.

32. See *infra* section VI.

33. See *infra* section VII.

these lawyers engaged in billing or expense fraud undetected for years? Why were they not caught immediately? Did other lawyers in their firms know what they were doing? If so, why was the misconduct not immediately —investigated and reported to disciplinary authorities or law enforcement officials?<sup>34</sup> How did the partners explain the misconduct of the lawyers charged with theft? Did the firms have educational programs or monitoring systems in place to prevent or detect such misconduct?<sup>35</sup>

- What was the fallout from these troublesome cases? Did they spawn civil suits against the lawyers, their firms, the insurers? Did all the lawyers lose their positions and stop practicing law? Did the lawyers or the firms repay the money that was misappropriated? Have the billing and expense fraud cases damaged the reputations or incomes of the law firms where they occurred? Have the firms made changes in management structure to prevent or detect billing fraud?<sup>36</sup>

- What measures are needed to eliminate billing and expense fraud from the legal profession? What can educators, regulators, criminal justice officials, law firms, and clients do to prevent or to detect this insidious pattern of misconduct? Should law firms abandon hourly billing? Should law firms need to restructure their compensation and incentive systems? Should unethical billing practices be addressed with greater specificity in the ethical rules that govern lawyers? Is monitoring by the bar, by malpractice insurers, or by clients likely to prevent or deter billing fraud? Is the relegation of billing disputes to fee arbitration part of the problem or part of the solution? What useful contribution can be made through educational efforts directed at law students, lawyers, clients, judges, or disciplinary officials?<sup>37</sup>

Study of these cases is helpful to understand some of the problems in the legal profession at the end of the twentieth century — problems of individual and institutional integrity, problems of arrogance and greed, problems of formal and informal regulation. This study may be useful to law firms, accountants, legal auditors, malpractice insurers, consumers of legal services, and lawyer regulators.<sup>38</sup> By better understanding how these highly educated and successful lawyers

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34. See *infra* Section VIII and Appendix “I”, which explains that some firms appear to have initiated investigation and made appropriate reports promptly upon learning of the billing fraud, while others waited months or years to take significant corrective action.

35. See *infra* section VIII.

36. See *infra* section IX.

37. See *infra* section X.

38. Readers may use the information for different purposes. Some may wish to learn about billing and expense fraud, or about misconduct within large law firms, but many readers may refer this work with more instrumental goals. A prosecutor handling a lawyer billing fraud case might wish to know what charges were filed or sentences imposed on each of the sixteen lawyers. A law firm manager might seek to learn how the billing fraud was discovered in each case. A bar counsel might want to find out who reported the misconduct in each case and whether the initial report was made to a disciplinary agency, a judge, or a prosecutor. A malpractice insurer might read for insight relevant to the development of policy on risk management and loss prevention. A lawyer representing another lawyer charged with billing or expense fraud might find useful the

came to engage in patterns of financial fraud, we may be better able to design educational and public and private regulatory structures that will reduce or eliminate lawyer billing fraud.

### C. RESEARCH METHODOLOGY

I collected information about the sixteen lawyers whose cases are examined here principally from journalistic publications, from published court opinions and from pleadings filed in disciplinary and criminal cases.<sup>39</sup> In many cases legal journalists and criminal and disciplinary investigators have explored these cases in such depth that richly detailed stories can be told. In some cases there is relatively little public information available. I have broken out this information into a series of tables which allow comparative examination of the lawyers, their behavior, their law firms, and the responses of various institutions to the billing fraud. Some tables are included in the text and followed by analysis of the data; others are presented as appendices.

My primary reliance on published documents may involve some distortion of the picture. I wrote to the lawyers in this study to let them know that I was writing about them and to invite them to share any information or comments,<sup>40</sup> but I have not been able to learn every side of these stories. The lawyers might offer different accounts of what happened and why it happened. There may be dimensions of the stories that remain unknown except to those who were directly involved. I do not pretend to know the absolute truth about these cases, or even the whole stories. Instead, my goal was to compile those parts of the stories that have been told by others and to compare the stories to see what can be learned from the collective picture.

The purpose of these comparative case studies is to learn as much as possible about the individual and institutional characteristics, values and circumstances that led to the billing and expense fraud of each of these lawyers. To prevent or deter billing and expense fraud, it is essential to understand the nature and causes of the misconduct. By examining the whole context of these events, it is possible

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inventory of mental health defenses and other mitigating circumstances that were presented by these sixteen lawyers. A more fearsome prospect is that an avaricious lawyer might read for details on methods of billing and expense fraud to expand his or her repertoire of methods of income expansion. Such a reader would be well-advised to review also the prison terms, disbarments, and other disastrous consequences that befell these sixteen lawyers.

39. Conventional law review citation has not been used in referencing sources of factual information presented in the tables in this article. The assembled data reported in the tables was collected from a set of articles, court decisions, and court filings, and often combinations of these. The sources are listed separately in Appendix N under the names of the lawyers. Footnotes in the tables were used to add specific notes and in support of direct quotations.

40. In response to my inquiries, I corresponded and/or talked with Webster Hubbell, Edward Digges, and Richard Salomon. I received responses from some of the other lawyers or their counsel, most often declining comment.

to obtain a fuller understanding of what happened and why and to assess how to address these problems.

## II. THE CHANGING PROFESSION

### A. THE RISING DOMINANCE OF INCOME GENERATION AS A PRIMARY GOAL

Various developments in the legal profession have contributed to the emergence of billing fraud as a major problem. During the 1980s and 90s, the legal profession has become more of a business and less of a profession. Civility has declined, competition has increased. Financial success has become the dominant value for many lawyers. Many lawyers and firms have subordinated professional standards, fiduciary obligations to clients, and ideas about mentoring to income maximization.<sup>41</sup> Preoccupation with profit is most intense in some of the most respected law firms in the United States.

The rising dominance of income generation as a central goal is evident in many recent trends in the profession.<sup>42</sup> Large law firms have grown larger,<sup>43</sup> lateral movement among firms has increased,<sup>44</sup> and the likelihood of an associate becoming a partner at his or her firm has dropped dramatically.<sup>45</sup> Partnership in a law firm used to represent life tenure.<sup>46</sup> Now many firms routinely lay off not

41. Deborah Rhode points to billing fraud as example of the way that self-interest eclipses fiduciary obligation. See Rhode, *supra* note 6, at 678.

42. One firm that exemplifies this trend is Winston & Strawn, which employed two of the sixteen lawyers in the sample. One former partner said "It's a law firm of the eighties and nineties, where you have a bunch of people tied together by money, and that's it." Emily Barker, *Winston & Strawn Gets Ruthless*, AM. LAW., June 1993, at 70. Barker described a wholesale layoff of 20 partners in 1993, orchestrated by then managing partner Gary Fairchild. She wrote of the situation, "Winston & Strawn is a law firm that never forgets it's a business, and business was down." *Id.* One impact of the partner layoffs was to return the associate: partner ratio to its former flush position of 6 to 1, and to boost the equity partners' profits by 4 percent, to \$415,000 per person. *Id.*

43. See RICHARD ABEL, AMERICAN LAWYERS 183 (1989) ("In the eleven years from 1968 to 1979, the average size of the twenty largest U.S. firms nearly doubled (from 128 to 234); in the nine years from 1979 to 1987, it more than doubled again."); see also Wade Lambert, *Women Lawyers Talk About Double Standard At Work*, WALL ST. J., Oct. 16, 1995, at B5 (noting that the "number of lawyers employed by the nation's 250 largest law firms grew by 2% over the past year"); Art Brewer, *1996 Survey Indicates Significant Gains*, N.Y.L.J., Nov. 4, 1996, at S4 ("The number of attorneys in the top 25 New York City firms has increased by 4.7 percent.").

44. David Segal, *When Legal Eagles Fly the Coop*, WASH. POST, July 1, 1996, at F10 (stating that "about 40% of the partners in the 2,000 largest law firms in the country are lateral hires."); Amy Stevens, *Somber Reunion for Harvard Law's Class of '85*, WALL ST. J., May 8, 1995, at B1 (noting that in the ten years between 1985 and 1995 the number of young lawyers who stayed with their first law firm decreased from 40% to 20%).

45. See Zay N. Smith, *Bird Name Hatches Wild Goose Chase*, CHI. SUN-TIMES, Sept 28, 1995, at 4 (noting that prior to 1981, 21.5% of male associates made partner while 15.3% of women made partner. Since 1981, the number has fallen to 17% for males, and 5% for females); Junda Woo, *Climb to the Top at Big Law Firms is Becoming Steeper and Steeper Every Year*, WALL ST. J., June 15, 1992, at B8 ("Ascending the partnership ladder at a major law firm is becoming more and more like climbing Mount Everest: Even the hardest probably will never reach the summit.").

46. See Jonathan M. Moses, *Partners Losing Their Guarantee of Life Tenure*, WALL ST. J., July 14, 1992, at B1 (quoting a legal placement service provider as saying, "It used to be when there were tough times, the older partners would simply take less . . . [t]here was no thought of firing partners").

only associates but also partners.<sup>47</sup> The desire to increase firm profits and partner income is the principal force that has driven these changes.<sup>48</sup>

Lawyers are employed at law firms in a multiplying number of statuses. Once all the lawyers were either associates or partners.<sup>49</sup> Now there are equity partners, income partners, junior partners, senior partners, of counsels, permanent associates, and part-time associates and partners.<sup>50</sup> The incomes of partners at large firms have increased enormously. There was some leveling off and decline in partners' incomes during the early 1990s,<sup>51</sup> but 1996 data suggests that the law business is expanding, and that partners' incomes have begun to swell again.<sup>52</sup> Firms have gradually increased demands on lawyers to bill hours.<sup>53</sup> Twenty years ago most firms expected lawyers to bill 1300 to 1500 hours per year.<sup>54</sup> By 1990 many firms had increased the annual target for both associates and partners to 2,000 hours per year, and the most demanding firms expected 2,500 hours per

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47. See Sandra Torrey, *Showing a Partner the Door, Based on the Bottom Line*, WASH. POST, Jan. 29, 1996, at F7 ("Ten years ago forcing out partners was unthinkable, but it has become more prevalent in the 1990s."); Moses, *supra* note 45, at B1 ("Life tenure, once a cherished guarantee of partnership, is going the way of afternoon tea and unlimited expense accounts at many large law firms.").

48. The Young Lawyers Division of the ABA produced a report on the declining quality of life for young lawyers titled "At the Breaking Point." One of the main problems the report identified was that firms require lawyers to work "ever-increasing billable hours." The report describes law firm managers in the 1980s as resembling "not the enlightened corporate executive . . . but rather the industrial manager in the earlier years of the Industrial Revolution." The critique of law firm managers continues: "they have taken the simple route of making more money by making non-equity individuals, and partners, work longer hours." The report is quoted in Nancy D. Holt, *Are Longer Hours Here to Stay?: Quality Time Losing Out*, A.B.A. J., Feb. 1993, at 62.

49. See *Status at Law Firms Used to be Cut and Dried, Not Anymore*, NAT'L L. J., Jan. 6, 1997, at B11 (stating that "Traditionally, law firms were overwhelmingly populated by two classes of lawyers 'partners and associates'").

50. *Id.*

51. See Ellen Joan Pollock, *Slump Hits Elite Firms, Survey Shows*, WALL ST. J., June 29, 1993, at B1 (noting that AmLaw 100 figures for 1992 show that "big, successful law firms" are "stuck in the doldrums"); Stephen Brill, *Short Term Pain, Long-Term Gain*, AM. LAW., Jan-Feb 1991, at 5 (noting that in 1991, 11 of the 12 law large law firms sampled showed a decline in profits per partner).

52. See Karen Dillon, *Finally the Roaring Nineties*, AM. LAW., July-Aug. 1997, at 13 (stating that partner profits in 1996 were up sharply from the prior year and that 1996 was the best year of the 1990s in terms of law firm profitability).

53. See Amee McKim, *The Lawyer Track: The Case for Humanizing the Career within a Large Law Firm*, 55 OHIO ST. L. J. 167, 174 (1994) (noting that billable hour requirements have increased in the last 10 years). Professor Manuel Ramos writes that "Partners in big firms have a tremendous incentive to overwork associates. Each additional associate hour billed after meeting the overhead is pure profit for the partners, who are all too eager to base yearly bonuses and promotions on hours billed over 'minimums' of 1800 and 2,000 hours. Average billable hours have grown, and the trend is to hire fewer lawyers to do more work." Manuel R. Ramos, *Legal Malpractice: The Profession's Dirty Little Secret*, 47 VAND. L. REV. 1657, 1718-19 (1994).

54. The ABA Commission on Women in the Profession notes that "The extraordinary increase in expected billable hours over the last fifteen years, from 1,300 to 1,500 to in excess of 2,000, is making it extremely difficult for lawyers to pursue . . . other interests [such as pro bono work, political work, continuing legal education and other teaching]." AMERICAN BAR ASSOCIATION, COMMISSION ON WOMEN IN THE PROFESSION: LAWYERS AND BALANCED LIVES: A GUIDE TO DRAFTING AND IMPLEMENTING WORKPLACE POLICIES FOR LAWYERS 5 (1990) [hereinafter ABA COMMISSION ON WOMEN]. See also McKim, *supra* note 53; William G. Ross, *The Ethics of Hourly Billing by Attorneys*, 44 RUTGERS L. REV. 1, 78-83 (1991).

year.<sup>55</sup> This work structure is nothing short of disastrous for the family and personal lives of lawyers who meet these expectations.<sup>56</sup>

Many aspiring lawyers enter law school with public-spirited goals, but the economics of legal education requires them to focus on income generation. The profession has become gradually more diverse. Forty years ago most law students were young men from privileged families. In recent years a more diverse group of students has entered law school<sup>57</sup> and become attorneys.<sup>58</sup> Lawyers as a group are more heterogeneous and less privileged. As law school tuition rises, more and more students get deep into debt before graduation. The vast majority of lawyers now start their careers with student loans of sixty to one hundred thousand dollars.<sup>59</sup> Most law students at elite schools are able to find high-paying positions in private practice if they want them, but many other new graduates must search for months to find any legal employment. A significant percentage of law school

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55. ABA COMMISSION ON WOMEN, *supra* note 54, at 5. One study conducted by the ABA indicated that between 1984 and 1990 the percentage of lawyers who worked more than 200 hours per month increased from 35% to 50%. Holt, *supra* note 48, at 64. While this survey does not appear to refer to hours billed, the increase in hours worked theoretically should produce an increase in hours billed. See Paul Marcotte, *Hours Way up: 2,500 Now Magic Number*, A.B.A. J., Dec. 1988, at 18 (reporting that lawyers in the most demanding firms averaged 2,500 billable hours, up from 2,210 in 1982); cited in Ramos, *supra* note 53, at 1719.

56. Professor Ramos reports that "In a study by the ABA Young Lawyers Division, lawyers complained of intolerable daily stress, work overload, time pressures, poor interpersonal relationships at work, inadequate support, and too much competition. As many as fifty-five percent of the men and sixty-one percent of the women said they had no time for themselves or their families." Ramos, *supra* note 53, at 1715, citing AMERICAN BAR ASSOCIATION, YOUNG LAWYERS DIVISION, *THE STATE OF THE LEGAL PROFESSION 1990* 24 (1991). One recent study tracking 584 women lawyers found that "those who worked more than 45 hours a week were three times more likely to have a miscarriage than those who worked less than 35 hours. Another study of men's suicide cases found that male lawyers were two times as likely to commit suicide as the general population." Laura Gatland, *Dangerous Dedication: Studies Suggest Long Hours, Productivity Pressures Can Cause Serious Health Problems and a Higher Suicide Rate for Attorneys*, A.B.A. J., 1997, at 28.

57. See Renee Landers, *Status, Progress, and Integration of Lawyers of Color in the Profession*, 19 W. NEW ENG. L. REV. 121, 123 (1997) (noting that a "revolution" has occurred in the legal profession in the last 25 years as more women and minorities go to law school); Arleen Jacobius, *Affirmative Action on Way Out in California, Law School Student Bodies Will Be Primarily White and Asian, Some Say*, A.B.A. J., Sept. 1995, at 22 (stating that the number of women at Boalt Hall increased from 4% in the mid-1960s to 48% in 1994. The number of non-Caucasian students, increased from "very few" in the mid-1960s to 40 percent in 1994). Arlene Jacobius has pointed out, however, that the recent California referendum to ban affirmative action may reverse this trend and "produce a law school population made up mostly of white and Asian students." *Id.* at 22.

58. The ABA Commission on Women in the Profession notes that "Twenty years ago, women were less than five percent of the legal profession." AMERICAN BAR FOUNDATION *THE LAWYERS STATISTICAL REPORT: A STATISTICAL PROFILE OF THE US LEGAL PROFESSION IN THE 1980s* 10 (1985). In 1990, women constituted more than 20% of lawyers, US DEPT. OF LABOR, BUREAU OF LABOR STATISTICS, *EMPLOYMENT AND EARNINGS*, Table 22, at 183 (1990), and more than 40% of law students. AMERICAN BAR ASSN. SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *A REVIEW OF LEGAL EDUCATION IN THE UNITED STATES, FALL OF 1989* 66 (1990). See also ABA COMMISSION ON WOMEN, *supra* note 54, at 4.

59. See 16 PA. LAW. 3 (1994); David Chambers, *The Burdens of Educational Loans: The Impacts of Debt on Job Choice and Standards of Living for Students at Nine American Law Schools*, 42 J. LEGAL EDUC. 187, 187 (1992).

graduates accept non-legal, temporary or part-time positions.<sup>60</sup> Lawyers are collectively far less satisfied with their careers than they were twenty years ago in part because of the demanding schedules imposed as a result of hourly billing.<sup>61</sup> Many lawyers leave the profession to search for better lives.<sup>62</sup>

Client behavior has also changed during the last twenty years.<sup>63</sup> Corporate clients that once each had a deep and stable relationship with a single firm now solicit bids from law firms for various chunks of legal work.<sup>64</sup> As the cost of legal services rises, corporations ask in-house counsel to do an increasing share of the legal work.<sup>65</sup> Corporations that once unquestioningly paid massive legal fees based on billing statements that offered little more information than "for professional services rendered" now publish extensive policies detailing what they will and will not pay for and in what form they require billing information.<sup>66</sup> The corporations' interest in cost control has given rise to a cottage industry of legal auditors who earn their fees by scrutinizing law firm bills and identifying fraudulent, improper or unnecessary charges.<sup>67</sup> Clients also are far more likely

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60. Cindy Collins, *NALP Survey Shows Increase in Non-Legal Work for Graduates*, 14 LAW. HIRING & TRAINING REP. 10 (1994); *Stable Job Market for Class of 1993 Law School Graduates*, 67 WIS. LAW. 6 (1994).

61. See James F. Mundy, *Making Practice More User Friendly*, 19 PA. LAW. 2 (1997) (stating that the level of job satisfaction among lawyers dropped by almost 20% from 1984 to 1990); David R. Edelstein, *Practicing Law: A Challenge to Your Mental Health*, CHICAGO BAR ASS'N RECORD June 1994, at 24 (noting that "ABA surveys show a steady decline in job satisfaction" among lawyers).

62. See Deborah K. Holmes, *Learning from Corporate America: Addressing Dysfunction in the Large Law Firm*, 31 GONZ. L. REV. 373, 376 (1995-96) (noting that 23% of New Jersey lawyers surveyed plan to leave the practice of law before retirement and that a similar number of North Carolina lawyers would not choose to become lawyers if they had the opportunity to make an initial career choice again); Holt, *supra* note 48, at 62 (reporting that "In Maryland, nearly one third of lawyers surveyed . . . in 1988 said they were not sure whether they wanted to continue practicing law; and 23 percent of North Carolina lawyers . . . [said in] 1990 . . . they would not become attorneys again.")

63. See generally Anne B. Fisher, *How to Cut Your Legal Costs*, FORTUNE, Apr. 23, 1990, at 185 (noting that "legal costs are ripe for the kind of stringent reducing every other corporate expense has undergone in recent years"). Fisher points out that "Law firms took in \$52 billion in 1985. This year the total looks to be around \$90 billion" and offers advice to corporations to reduce legal costs. *Id.*

64. See Helen A. Garten, *Insider Trading in the Corporate Interest*, 1987 WIS. L. REV. 573, 606 (1987) (noting that corporations are breaking established ties with law firms and forcing the firms to bid for individual projects); Amy Stevens, *Lawyers and Clients*, WALL ST. J., Jan. 7, 1994, at B9 ("In some instances, companies are conducting 'beauty contests,' in which lawyers compete for work by trying to submit the lowest bid.").

65. See Garten, *supra* note 64, at 606 (noting expansion of the use of in-house lawyers by corporations). One example of this is that over a two-year period, in-house staff at FDIC went from handling 39% to handling 57% of FDIC legal work. See Alfred J. T. Byrne, *Manager's Journal: You Think You Have Lawyer Problems?*, WALL ST. J., Nov. 2, 1992, at A16 (discussing the FDIC's legal management system, which includes doing more work in-house).

66. See Ross, *supra* note 54, at 2 & n. 9 (citing support for the proposition that corporate clients who would once acquiesce to lawyer billing practices now scrutinize law firm bills). In 1992, Walt Disney Co. sent a memo to its outside lawyers stating that it "would not tolerate the kinds of billing practices that it routinely accepted in the 1980s." See Amy Stevens, *Disney Acts to Cut Overcharging for Work by Outside Law Firms*, WALL ST. J., Mar. 2, 1992, at B5. One law firm response to the memo was "[w]e applaud this, and we'll apply it, but we're just sorry that things have reached such a state in our profession where this is necessary." *Id.*

67. See Larry Smith, *Legal Auditors Expand their Practice Amid Growing Criticism*, INSIDE LITIG., Oct. 1993, at 24 (1993) (discussing the role of the legal auditor).

than they once were to sue their lawyers for malpractice or breach of fiduciary duty.<sup>68</sup>

## B. THE GROWTH OF LAWYER REGULATION

The institutions that regulate lawyers have grown enormously during the last twenty years. Once staffed principally by volunteers, lawyer disciplinary agencies now employ hundreds of full-time lawyer prosecutors.<sup>69</sup> Ethics committees also have acquired full-time professional staff.<sup>70</sup> Malpractice insurers employ another layer of regulators who offer training and counseling on risk management to insured firms.<sup>71</sup> Many law firms have set up ethics committees and have appointed general counsels who spend their time training and counseling lawyers and monitoring firm practices that present risks of liability or disciplinary action.<sup>72</sup>

The law governing lawyers has grown exponentially. In 1980 there was little literature on the law governing lawyers. Each state had an ethics code and many had ethics committees that published advisory opinions interpreting the ethical rules.<sup>73</sup> Most law schools had established a requirement that every student take a course in professional responsibility.<sup>74</sup> Then there emerged a couple of significant treatises,<sup>75</sup> a weekly loose-leaf service,<sup>76</sup> a dozen or more new textbooks,<sup>77</sup>

68. "Between 1979 and 1986, not only did the number of legal malpractice cases double, but the average settlement nationally soared from \$3,000 to \$45,000." Ramos, *supra* note 53, at 1678. It is not clear whether the rising number of malpractice cases reflects an increase in lawyer misconduct, or simply a change in attitudes about responding to lawyer misconduct by filing suit.

69. See Mary M. Devlin, *The Development of Lawyer Disciplinary Procedures in the United States*, 7 GEO. J. LEGAL ETHICS 911, 929 (1994) (discussing evolution of the lawyer discipline system and noting that "almost every state [has] professional disciplinary counsel, on staff").

70. See Quintin Johnstone, *Bar Associations: Policies and Performance*, 15 YALE L. & POL'Y REV. 193, 201 (1996) (explaining the roles of staff of state bar ethics committees).

71. See Ted Schneyer, *Legal Process Scholarship and the Regulation of Lawyers*, 65 FORDHAM L. REV. 33, 65 (1996) ("It is well understood that malpractice insurers help their insureds avoid liability by providing expert risk management advice.")

72. See Jonathan M. Epstein, *The In-House Ethics Advisor: Practical Benefits for the Modern Law Firm*, 7 GEO. J. LEGAL ETHICS 1011, 1128 (1996) (discussing the range of tasks performed by law firm ethics committees and in-house ethics advisors to avoid risks of liability or disciplinary action against lawyers in the firms).

73. See Whitney A. McCaslin, *Empowering Ethics Committees*, 9 GEO. J. LEGAL ETHICS 959, 965 (1996) (discussing the emergence and role of state ethics committees).

74. The American Bar Association now requires all ABA accredited law schools to provide "instruction in the duties and responsibilities of the legal profession." AMERICAN BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS 302(a)(iv). The course must cover the "history, goals, structure and responsibilities of the legal profession" as well as the ABA *Model Rules of Professional Conduct*. See *id.*

75. CHARLES W. WOLFRAM, MODERN LEGAL ETHICS (1986), GEOFFREY G. HAZARD, JR. & W. WILLIAM HODES, THE LAW OF LAWYERING: A HANDBOOK ON THE MODEL RULES OF PROFESSIONAL CONDUCT (2d ed. 1990).

76. AMERICAN BAR ASSOCIATION AND BUREAU OF NATIONAL AFFAIRS, LAWYERS' MANUAL ON PROFESSIONAL CONDUCT.

77. E.g., NATHAN CRYSTAL, PROFESSIONAL RESPONSIBILITY: PROBLEMS OF PRACTICE AND THE PROFESSION (1996); STEPHEN GILLERS, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS (4th ed. 1995); GEOFFREY HAZARD ET AL., THE LAW AND ETHICS OF LAWYERING (2d ed. 1994); DEBORAH RHODE & DAVID LUBAN, LEGAL



and a specialized journal on legal ethics.<sup>78</sup> Forward-looking law schools began to set up ethics institutes.<sup>79</sup> Scores of law professors began to turn out a rich body of literature on the legal profession.<sup>80</sup> In 1984, the American Law Institute decided to produce a restatement on the law governing lawyers.<sup>81</sup> The growing body of law reflects a mushrooming network of public and private regulatory activity focussed on the legal profession. The growing profession may be burdened by complex problems, but the regulatory structures provide increased capacity to respond to those problems. Hundreds of practicing lawyers and academics now specialize in legal ethics. While some of the ethical dilemmas encountered by lawyers are a product of recent developments in the profession (such as the conflicts of interest that arise in firms with thousands of lawyers), others have been there all along (such as the conflict between the obligation to keep client confidences and the obligation to be truthful in presenting information to a tribunal). The committees and books and journals and conferences on these topics have led the profession to a higher level of awareness of ethical questions, and have led some issues to be recognized as problems that previously went unnoticed.

The public image of the legal profession has experienced both positive and negative changes during the last twenty years. The profession has become the favorite whipping boy of conservative politicians and talk show hosts.<sup>82</sup> At the same time lawyering has become chic: movies, books and television shows depict lawyers as wealthy, good-looking, competent, and idealistic.<sup>83</sup> The popular television show *L.A. Law* turned out to be the most significant factor in a major increase in applications to law school during the late 1980s.<sup>84</sup> This

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ETHICS, (2d ed. 1995); THOMAS MORGAN & RONALD ROTUNDA, PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (6th ed. 1995). This represents only a small sample of the fine available texts.

78. The *Georgetown Journal of Legal Ethics* began publication in 1987.

79. These include the Stein Center for Ethics and Public Interest Law at Fordham Law School, The University of Pennsylvania Law School Center on Professionalism, Kennedy Institute for Ethics at Georgetown University, Keck Center on Legal Ethics and Legal Profession at Stanford University, Center for Ethics in Public Policy & Professions at Emory University, Program in Ethics and Professions at Harvard University.

80. See generally Deborah L. Rhode, *Annotated Bibliography of Educational Materials on Legal Ethics*, 58 LAW & CONTEMP. PROBS. 361 (1996) An updated version of the bibliography will be published in the *Georgetown Journal of Legal Ethics*.

81. This Restatement is entitled RESTATEMENT OF THE LAW: THE LAW GOVERNING LAWYERS. This restatement is still going through a revision process within the American Law Institute. Tom Morgan and Ronald Rotunda assert optimistically that "It is expected to be finished sometime before the start of the next millennium." MORGAN & ROTUNDA, *supra* note 77, at 13.

82. See Paula A. Franzese, *Speech E. Pluribus Unum ? From Many, One: In Unity There is Strength*, 25 SETON HALL L. REV. 1460, 1461 (1995) ("[T]he [legal] profession is now fodder for joke after joke after joke. From Jay Leno to Rush Limbaugh to Geraldo, jabs at lawyers have become commonplace.")

83. See, for example, the many works of John Grisham, including the novels *The Firm*, *The Client*, *The Pelican Brief*, *A Time to Kill*, and others, and the film *Class Action*. The television show *Law and Order* is another relevant example.

84. See Alan Abrahamson, *Applications Hit Record Highs for US Law Schools: Increase Attributed to Impact of Television Hit L.A. Law*, LOS ANGELES TIMES, Aug. 20, 1989, at B1.

dichotomous public image may reflect both envy of lawyers' newfound methods to generate higher incomes and mistrust of the fiduciaries who wind up in possession of such a large portion of their clients' assets.<sup>85</sup> The ABA Standing Committee on Ethics and Professionalism wrote in 1993 that "One major contributing factor to the discouraging public opinion of the legal profession appears to be the billing practices of some of its members."<sup>86</sup>

### III. LAWYER BILLING AND EXPENSE FRAUD: A BY-PRODUCT OF THE CULTURE OF GREED

Hourly billing pressure may be the most serious problem faced by the legal profession. It has robbed many lawyers of the possibility of balanced lives, has caused a decline in mentoring, collegial relationships, and professional satisfaction, and has had a marked corrosive effect on the integrity of many lawyers, including those who are the subject of this study. Billing pressure is partly responsible for the low esteem in which our profession is held.<sup>87</sup> Billing and expense fraud is only one product of the billing mania that has taken over the culture in so many large firms. Regardless of the precise magnitude of this problem, the profession must take it on. As long as some lawyers deceive their clients about how much time they are spending or what they are doing, all clients worry. If clients lose confidence that there is some objective basis for the amount they are billed, or if clients lose confidence that their lawyers are candid about the basis for their bills, who could fault clients who become suspicious, demanding itemization and compliance with restrictions?

The profession has just begun to study the problem of billing and expense fraud. Our disciplinary rules do not include any specific prohibition of billing fraud, but make a general exhortation that fees must be reasonable. In 1993 the ABA Ethics Committee issued an opinion on issues relating to hourly billing, prohibiting padding of time sheets, double-billing, billing anew for recycled work, and charging above cost for administrative or other non-legal services.<sup>88</sup>

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85. The poor public image of lawyers is highlighted in a poem by Alan Knight, reprinted in the *Wall Street Journal*: "These newfound legal terms today, You know they've got me reeling; What lawyers now call over-billing I thought was simply stealing." Alan Knight, *Legal Sleaze*, *WALL ST. J.*, Jan. 11, 1995, at A15.

86. ABA Standing Committee on Ethics and Professionalism, Formal Op. 93-379 (1993).

87. See generally Patrick J. Schlitz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 *MINN. L. REV.* 705 (1998) (discussing the legal profession's contemporary unprecedented preoccupation with money, and the negative consequences of the culture of greed for the lives of lawyers, for mentoring relationships, and for the moral development of lawyers).

88. Formal Op. 93-379, *supra* note 86. The opinion states that

- a lawyer who agrees to bill on basis of time spent cannot bill for more than actual time spent except for rounding time up to a minimum billing increment;
- a performance fee or bonus may be added to the lawyer's fee only if the client agrees;
- a lawyer may charge clients separately for expenses incurred in connection with legal services, but may not charge for overhead related to maintaining, staffing and equipping an office;

This opinion was an important step in the direction of providing needed guidance to lawyers, and has been followed or extended by many other state and local bar ethics committees.<sup>89</sup> Still, lawyers, firms, and lawyer regulators have been slow to recognize the frequency and seriousness of billing fraud. The disciplinary systems still focus on monitoring trust accounts as a primary method of detecting theft from clients.<sup>90</sup> Some have established random trust account audit programs or overdraft notification systems.<sup>91</sup> These measures are important, but they fail to detect what may be the most common method of theft from clients in the nineties: billing and expense fraud.

The collective denial and minimization of unethical billing practices may be explained in part by self-interest. Within a firm, for example, the partner of a lawyer engaged in billing fraud might turn a blind eye to misconduct if he shares

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- marking up expenses not permitted, either for services provided in office or services provided by third parties
  - a lawyer may not bill one period of time to more than one client;
  - a lawyer may not bill a client not bill more than actual time spent even if a job that would have taken twenty hours takes only two because a similar job was recently done for another client;
  - a bill for legal services that states only a total dollar figure "often does not provide sufficient information" to a client.

89. DC Bar Ethics Committee, Op. No. 267, Disclosure of Billing Practices (1993) (states that when client is informed that he will be billed based on time worked, violation of rule 8.4 to impose additional undisclosed fees that are not calculated on the disclosed basis; concurs with ABA Op. 93-379 that a lawyer cannot charge more than hours expended when he has told a client he will bill based on time); Alabama Ethics Op. RO-94-02 (1993) (adopting ABA Formal Op. 93-379); South Carolina Bar Advisory Op. 96-13 (1996) (stating that a lawyer may bill clients for paralegal services as long as the lawyer complies with the disclosure requirements in ABA Formal Op. 93-379); Arizona Op. 94-10 (1994) (requiring that a lawyer may bill a client for costs calculated as a percentage of total fees instead of itemizing expenses, as long as the method of calculating costs is disclosed to the client and the lawyer is prepared to show that the method of calculation approximates actual costs); Alaska Bar Association, Ethics Op. 95-4 (1995) (approving guidance offered in ABA opinion 93-379 and stating that a lawyer must charge clients only actual (not marked up) cost of any services provided by third party vendors, and that any in-house expenses to be charged to a client must be disclosed to client in advance and agreed to by client); State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Op. 1996-147 (1996) (noting that where an attorney performs work on more than one matter at a time, the lawyer may not bill a full hourly rate to more than one client for the same time period, or bill one client a multiple of that hourly fee for that same time period unless the lawyer has disclosed the practice at the outset, obtained client consent, and made sure the fee is not unconscionable); Ass'n of the Bar of the City of New York Committee on Professional and Judicial Ethics, Op. 1994-9 (1994) (stating that preparation of bills may be delegated to nonlawyers but lawyers are responsible for any improprieties in billing).

90. See generally, Irene M. Ricci, *Trust account: Client Trust Funds: How to Avoid Ethical Problems*, 11 GEO. J. LEGAL ETHICS 245 (1998).

91. See AMERICAN BAR ASSOCIATION, LAWYER REGULATION FOR A NEW CENTURY, REPORT OF THE COMMISSION ON EVALUATION OF DISCIPLINARY ENFORCEMENT 76 n.19 (1992) (noting that, as of 1992, attorney recordkeeping verification rules exist in eleven states (Arizona, Delaware, Florida, Iowa, Minnesota, New Hampshire, New Jersey, New Mexico, New York (1st and 2nd Departments), Washington and Wisconsin), trust account overdraft notification rules exist in twelve states (California, Connecticut, Florida, Idaho, Maryland, Minnesota, New Jersey, North Carolina, Rhode Island, Vermont, Virginia and Washington), and random audit programs exist in eight states (Iowa, Nebraska, New Hampshire, New Jersey, New York (1st and 2nd Departments), North Carolina, Vermont and Washington)).

in the resulting income. Lawyers who engage in billing fraud violate many well-entrenched assumptions about the professional integrity of the individuals and the institutions involved. Professor Deborah Rhode posits that practicing lawyers, judges and disciplinary officials may suffer from “cognitive conservatism”, in which they “. . . are more likely to register and retain information that is compatible with established beliefs or earlier decisions;”<sup>92</sup> also they may experience “cognitive dissonance,” in which, “[a]fter making a decision, individuals tend to suppress or reconstrue information that casts doubts on that decision.”<sup>93</sup>

Most people asked to describe unethical lawyers might identify ambulance chasers, marginal sole practitioners, isolated alcoholics, and unscrupulous personal injury lawyers.<sup>94</sup> Some of the wealthiest American lawyers — partners in large law firms — have enjoyed a widespread assumption that their ethical standards are impeccable.<sup>95</sup> They are highly educated, well paid, have intelligent support staff and large libraries. One might assume that they are invulnerable to the temptations that have led more marginal lawyers to engage in unethical behavior.<sup>96</sup>

#### A. HOW MUCH BILLING FRAUD IS THERE?

Research suggests that there is a substantial amount of billing and expense fraud. Only some fraction of the incidents lead to discipline, criminal prosecution, or civil liability.

- A great deal of billing fraud is not reported in the press and does not lead to prosecution or disciplinary proceedings.<sup>97</sup> In interviews and questionnaires I have received anonymous or confidential reports of numerous lawyers (not the

92. Rhode, *supra* note 6, at 685.

93. *Id.* Rhode points out also that “insensitivity [to ethical issues] is exacerbated by common human tendencies to explain ethical misconduct in terms of individual deviance rather than institutional constraints. It is easier to attribute problems of professionalism to occasional lapses by aberrant practitioners than to acknowledge failures in market structures and regulatory design.” *Id.* at 686.

94. See Amy R. Mashburn, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U. L. REV., 657, 677 (1994). Mashburn finds a correlation between prestige — defined as the “moral authority to make judgments about the standards of professional behavior” — and reputation for ethical behavior. Studies conducted in Chicago and Detroit show that large corporate law firms are perceived as high prestige firms and that the lawyers who work in those firms are regarded as the most ethical. Small personal injury, divorce, and criminal defense firms are perceived as low prestige and the lawyers who work there are perceived as the least ethical. See *id.*, at 676–77; see also Peter Gerstenzang, *Up and Down by Sleazebag Lawyers on Video*, ENT. WKLY., Oct. 18, 1996, at 89 (discussing videos that portray unethical and sleazy lawyers as alcoholic ambulance-chasers (e.g., THE VERDICT), drug-addicted defense attorneys (CARLITO’S WAY), and lawyers whose careers are on a downhill slide (THE BELIEVER)).

95. See Mashburn, *supra* note 94, at 677 (discussing the results of two studies of hierarchy in large city legal communities).

96. Ted Schneyer points out that even if there is inadequate or improper conduct by lawyers representing corporate clients, the clients are less likely than individual clients to complain to disciplinary agencies, and more likely to exert pressure on the firm or to hire a different firm. Schneyer, *supra* note 6, at 7–8.

97. I have reported examples of such cases elsewhere. Lisa G. Lerman, *Lying to Clients*, 138 U. PA. L. REV. 659, 705–720 (1990) [hereinafter Lerman, *Lying to Clients*]; Lisa G. Lerman, *Gross Profits: Some Questions*

ones discussed in this Article) who are in powerful positions in their firms and in the profession who are engaged in chronic billing fraud.<sup>98</sup> Most of the lawyers with whom I talk about this topic report stories from their own firms and voice the opinion that these problems are epidemic.

- Survey data collected by Professor William Ross suggests that a majority of lawyers who bill by the hour at least occasionally inflate their hours, and that a smaller percentage of them anonymously admit to larger-scale inflation of hours or fabrication of time records.<sup>99</sup> Most lawyers report that other lawyers engage in billing fraud more often than they themselves do.<sup>100</sup>
- In some of the cases examined in this article, other lawyers in the law firms were aware of the billing fraud of their partners. Some accepted or participated in it, some turned a blind eye to it, some fired lawyers who attempted to initiate investigation of it.

Ten years ago the kinds of billing fraud that now lands some lawyers in prison was widely accepted among lawyers in many large private law firms. In recent years this conduct has begun to be “criminalized.” Although stealing has been regarded as criminal for centuries, stealing by misrepresentation of hours worked or by doing superfluous work to generate billable hours was treated as an unstated exception to the prohibition against theft.<sup>101</sup> One possible explanation why some of these intelligent and educated people allowed themselves to pursue patterns of avaricious behavior is that other lawyers they knew were engaged in similar billing and expense fraud and no one thought there was anything wrong with it.

## B. THE SIGNIFICANCE OF THE SIXTEEN CASES

The cases examined in this article are perhaps the most startling of a spate of recent cases of billing and expense fraud. Some of the twenty other cases I identified also defy conventional notions about what kind of misconduct is

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*About Lawyer Billing Practices*, 22 HOFSTRA L. REV. 645, 648–650 (1994) [hereinafter Lerman, *Gross Profits*]; Lisa G. Lerman, *Scenes from a Law Firm*, 50 RUTGERS L. REV. 2153 (1998).

98. *Id.*

99. Professor William Ross of Cumberland School of Law surveyed 500 lawyers and received responses from 272. Of that group, 49% of the respondents said that they either “rarely” or “occasionally” billed two clients for the same period of time (engaged in double billing), while 1.2% admitted to “frequent” double billing. Ross, *supra* note 54, at 15.

100. Professor Ross asked how often the respondents thought that other lawyers “padded” their hours (recording more time than actually worked), and found that 12.3% said other lawyers pad their hours “frequently”; 80.4% said “rarely” or “occasionally”; 7.3% said “never”. *Id.* at 16.

101. In fact, lawyers inflated the number of hours billed beyond actual time worked 200 years ago. The term “verbose attorney,” was attributed to “the custom in modern Europe to regulate. . . the payment of the attorneys [sic] and clerks of court according to the number of pages which they had occasion to write. . . In order to increase their payment, the attorneys [sic] and clerks have contrived to multiply words beyond all necessity, to the corruption of the law language of every court of justice in Europe.” ADAM SMITH, *THE WEALTH OF NATIONS* 680 (Modern Library ed., 1937) (1776), cited in *Letters to the Editor, Billing Clients Can Be Murder*, WALL ST. J., Nov. 18, 1991, at A17.

committed by what type of lawyer. Two of the other twenty cases involve theft of millions of dollars.<sup>102</sup> Some of them involve lawyers at prestigious and respected law firms.<sup>103</sup> Most of the cases involved lawyers who were partners in well-established law firms; only three involve solo practitioners.<sup>104</sup>

The sixteen cases that are the primary subjects of this study may represent "the tip of an iceberg".<sup>105</sup> If lawyers with top credentials and superb institutional support are stealing from their clients, the profession needs to re-evaluate its assumptions about standards of practice and self-regulation. These cases represent individual and institutional failures that are difficult to fathom. Lawyers and clients must reconceptualize lawyer misconduct and move from a model that focuses only on individual deviance to one that takes account of the role played by legal organizations in tolerating or tacitly requiring unethical and even criminal behavior.<sup>106</sup>

#### IV. THE LAWYERS AND THEIR LAW FIRMS

##### A. EDUCATIONAL BACKGROUND AND PROFESSIONAL RECORD OF THE LAWYERS

The lawyers whose cases are examined here are among the best educated and most accomplished lawyers in the United States. A review of their credentials and their professional histories is dizzyingly dissonant with the collective picture of shameless, calculated thievery.

Most of these lawyers attended elite law schools.<sup>107</sup> Some earned law degrees at Chicago, Columbia, Georgetown, Harvard, Hastings, New York University, Northwestern, University of Southern California, Virginia, and Yale. Two were

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102. James Dougherty was alleged to have stolen \$5 million through billing fraud; Lynn Boyd Stites' scheme is estimated to have involved theft of between \$50 million and \$200 million. See Appendix A.

103. These firms include, for example, Hopkins & Carley; Sidley & Austin; Shaw, Pittman, Potts & Trowbridge; Katten, Muchin & Zavis; Seyfarth, Shaw; and Eckert, Seamans. See Appendix A.

104. The solo practitioners are James Dougherty, Forriss Elliott, and Lynn Boyd Stites.

105. Those attempting to call the attention of the legal profession to an unrecognized problem tend to characterize the visible portion of the problem as the "tip of an iceberg." Another segment of literature seeking to minimize certain problems in the legal profession may point to these same visible instances of misconduct merely as "a few bad apples." See Ramos, *supra* note 53, at 1695 (noting this trend and subscribing to the iceberg metaphor in his description of the growing problem of legal malpractice). Professor Geoffrey Hazard offers an example of an attempted but incomplete shift in conception of lawyer misconduct. On *Primetime Live*, he said "It's not as bad as you think. It's worse. They say there are only a few bad apples. That, of course, is not true. There are quite a few bad apples." PRIMETIME LIVE, *Law and Disorder: Unethical Lawyers*, (ABC television broadcast, Feb. 10, 1994). Ted Schneyer discusses how treatment of lawyer or law firm misconduct as "bad apples" hampers the recognition of institutional problems and the development of systemic solutions. Schneyer, *Professional Discipline*, *supra* note 6, at 1.

106. Professor Ted Schneyer wisely observes that one must examine both individual and institutional causes of misconduct. He writes: "[t]o say that the bulk of unethical conduct in law firms has organizational rather than individual roots may exaggerate the case. Yet it would be foolhardy to suppose, especially for the larger firms, that bureaucratic failings and collective decisions do not play a significant causal role." Schneyer, *Professional Discipline*, *supra* note 6, at 25.

107. Sources for the information included in this section are identified in Appendix B.

clerks to federal judges.<sup>108</sup> Two others held senior editorial posts on their law reviews.<sup>109</sup> Three had been attorneys at the Department of Justice, and one of those was Associate Attorney General.<sup>110</sup> Most of these lawyers received superior educations, both as undergraduates and as law students. Nearly all of them became partners at large and prestigious law firms. Seven were managing partners.<sup>111</sup> Two others were the heads of departments in their firms.<sup>112</sup>

Some of the lawyers had sterling reputations prior to the emergence of their fraudulent activity. Gary Fairchild presents a prime example. After Fairchild was fired by Winston & Strawn, Kelly A. Fox, the managing editor of *Illinois Legal Times* said, "If someone asked me two weeks ago, 'who are the most impressive lawyers in Chicago?' his name would have come up."<sup>113</sup> One of Fairchild's partners said, "If you told me there was only one honest lawyer out of 476 lawyers here, I would tell you it was Gary Fairchild . . . . He seemed to be perfectly open and above board. It's like when the kid next door turns out to be an ax murderer."<sup>114</sup> A *Wall Street Journal* article stated that "[s]everal partners report that over the years, Mr. Fairchild occasionally second-guessed their expense accounts and appeared ethically fastidious."<sup>115</sup>

Several others among the sixteen lawyers had excellent reputations. Webster Hubbell served as Associate Attorney General of the United States. Many lawyers who worked with him at the Department of Justice regarded him as a paragon of integrity.<sup>116</sup> Hubbell also served as Mayor of Little Rock, Arkansas, Chief Justice of the Arkansas Supreme Court, and chaired the Ethics Committee of the Arkansas Bar Association and the Arkansas Board of Bar Examiners. Richard Salomon was an Advisor to the American Law Institute and assisted the ABA Commission on Professionalism. His record shows a long list of publications, including several articles in legal ethics.<sup>117</sup> William Duker, who boasted a law degree from Yale and a Ph.D. from the University of Cambridge, clerked for

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108. William Duker and Richard Salomon.

109. Webster Hubbell and Timothy Flato.

110. William Appler, Gary Fairchild, and Webster Hubbell.

111. Edward Digges, Jr., William Duker, Harvey Myerson, Wilkes Morgan, H. Lawrence Fox, Gary Fairchild, and Webster Hubbell.

112. James Crowley headed the litigation department at Thompson, Hine & Flory; Timothy Flato headed the project-finance group at Latham & Watkins.

113. David Margolick, *A Theft Scandal Ravages a Career at a Leading American Law Firm*, N.Y. TIMES, May 13, 1994, at B18.

114. *Id.*

115. Stevens, *supra* note 44, at B3.

116. See Michael Isikoff, *Hubbell Resigns at Justice in Rose Law Firm Dispute; Accused of Overbilling Clients, Improper Expenses*, WASH. POST, Mar. 15, 1994, at A1 (observing that Attorney General Janet Reno "called Hubbell a 'tireless crusader for doing the right thing,' and she was confident he had done nothing wrong.").

117. See entry on Richard Salomon in Appendix B.

Judge Patricia Wald, worked as a lawyer at Cravath, Swaine & Moore, and then became a law professor in Albany.<sup>118</sup>

Not every one of the sixteen lawyers displays this “star” quality in the same degree, but the litany of the lawyers’ credentials and experience is impossible to reconcile with the misconduct that led to prosecution and/or discipline for these lawyers. One or two such cases could be explained as aberrational, but sixteen such cases raise questions about our collective assumption that education and professional achievement are necessarily associated with high standards of integrity and professional conduct.

#### B. LAWYERS’ INCOME, BILLINGS, AND BILLABLE HOURS

Many of the sixteen lawyers examined in this article had high managerial positions, either as the managing partners of their firms, or of their branch offices, or the heads of their departments. Many of these lawyers were rainmakers: lawyers who brought in significant amounts of business, were responsible for millions of dollars in annual billings, and themselves billed more hours per year than most of the other lawyers in their firms.

Many of these lawyers billed enormous numbers of hours. Digges billed 5,800 hours one year. Two others billed at or above 3,000 hours a year at least in some years. (Salomon billed 3,500, Flato billed 3,000.) Two others on the list are identified in the articles about them as a “top-billing” partner (Fox) or as the “highest biller” in his firm (Hess, although he claimed at his disciplinary hearing never to have billed 2,000 hours).<sup>119</sup>

Many of these lawyers were successful rainmakers, bringing in significant amounts of business and responsible for millions of dollars per year in billings. Flato was responsible for \$4–6 million per year in billings, Taub for \$1.5 million per year, Hess for \$1 million per year.<sup>120</sup>

One ingredient in the development of the schemes to manipulate hours and expenses billed may be the discretion that accompanies responsibility for the management of large amounts of work. These lawyers tended to deal with big clients that paid large fees. When one is dealing in big numbers, perhaps for some lawyers small modifications in time sheets or expense vouchers seem insignificant or permissible.

Many of these sixteen lawyers were earning incomes that placed them at the top of their profession during the same years that they engaged in billing and expense fraud. Duker earned between \$1 million and \$5 million per year. Digges earned \$678,000 one year, Flato and Fairchild each earned \$600,000

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118. See entry on William Duker in Appendix B.

119. See Appendix C for sources on this data.

120. *Id.*



during at least one year. Wolas was reported to earn about \$500,000.<sup>121</sup> Large-scale billing fraud, then, is not caused by anything that most of us would recognize as economic need. Perhaps for some people, high incomes contribute to a loss of perspective, boundaries, or even integrity.

### C. THE LAW FIRMS.

One might expect large-scale billing fraud to be uncovered at firms reputed to be unethical or excessively aggressive or dishonest. Again our expectations are not met — the law firms are or were among the best-regarded law firms in the United States. If large-scale billing fraud occurred in these firms, does it occur in others? Do some firms have institutional mechanisms or value systems that would discourage or prevent such misconduct? Why was this type of fiduciary failure possible at so many respected firms?

The sixteen lawyers included in this study were employed at fifteen firms. (Two were at Winston & Strawn). Of those fifteen firms, one is defunct (Myerson & Kuhn) and three have changed their names.<sup>122</sup> Of the other twelve, seven are among the 100 highest-grossing law firms in the United States in 1996, and six out of those seven are in the top fifty.<sup>123</sup> The seven firms collectively employ 3,800 lawyers.<sup>124</sup> Of the other six existing firms, three employ over 100 lawyers each (Chapman, Bronson & Weinberg), two are among the largest 350 firms in the US (Chapman and Bronson), and one (Rose) was the firm of the first lady and the former Associate Attorney General. William Duker's firm was a spin-off from Cravath, Swaine & Moore.<sup>125</sup> Myerson & Kuhn was a large firm representing big-name clients before it filed for bankruptcy.<sup>126</sup> Digges, Wharton & Levin was a spin-off from Piper & Marbury, another very large firm.<sup>127</sup> Edward Digges, Jr., had been the managing partner at Piper & Marbury.<sup>128</sup>

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121. *Id.*

122. Digges, Wharton & Levin is now known as Wharton, Levin, Ehrmantraut, Klein and Nash; Duker, Barrett, Gravante & Markel is now known as Barrett & Gravante. MARTINDALE-HUBBELL LAW DIRECTORY 1997; Sharon Walsh, *Lawyer Says He Cheated Government; Guilty Plea Entered in Overbilling Case*, WASH. POST, Aug. 22, 1997, at G1. Weinberg & Green merged with Saul, Ewing, Remick & Saul in 1999 and is now called Saul, Ewing, Weinberg & Green. Conversation with Deborah Shortridge, Esq., June 1999.

123. In the 1997 AmLaw 100 rankings, Latham & Watkins was fourth, Mayer, Brown & Platt was seventh, McDermott, Will & Emery was fifteenth, Akin, Gump, Strauss, Hauer & Feld was twenty-fourth, Hundton & Williams was 33<sup>rd</sup>, Winston & Strawn was 35<sup>th</sup>, and Thompson, Hine & Flory was 88<sup>th</sup>. See Table 2.

124. The larger the number of lawyers in these firms, the higher its ranking for gross billings. As of 1996, Latham had 660 lawyers, Mayer had 643, McDermott had 610, Akin had 593, Hunton had 489, Winston had 487, and Thompson had 315. See Table 2.

125. Walsh, *supra* note 122, at G1.

126. Arlynn Leiber Presser, *Lawyer Indicted for Overbilling*, 91 A.B.A. J., May 1991, at 27.

127. Piper & Marbury is ranked 80<sup>th</sup> for gross revenue in the 1997 AmLaw 100 (\$101 million). It had 294 lawyers and profits per equity partner of \$310,000 in 1996. *America's Highest Grossing Firms in 1996*, *The AmLaw 100*, AM. LAW., July-Aug. 1997, at special insert.

128. Rick Greenberg, *Obsession: How a Blue-Blood Lawyer Sold His Soul to Regain His Birthright*, 10 REGARDIES 48 (1990).

Most of these firms have fine reputations. Of the Rose Firm,<sup>129</sup> for example, Judge Digby of Arkansas said "if there was ever a law firm that stood at the top of the heap in terms of eliteness, it was at the pinnacle."<sup>130</sup> As with the educational background and professional accomplishments of the lawyers, it is surprising to find a pattern of cases involving theft of large amounts of money from clients and partners at these highly respected firms. One might imagine that the institutional culture of such firms would lead to intolerance of this type of behavior, and that the management structure would be designed to provide both training and monitoring that would prevent or detect billing fraud. But these lawyers are not just mavericks who slipped by an otherwise conscientious management structure. In many instances, they were the managers. Their billing practices may have been exempt from ordinary institutional scrutiny because of their senior positions. If so, one might draw from these cautionary tales the message that legal organizations need to monitor their generals as well as their infantry.

It is difficult to get a clear picture of the reputation of a law firm. One crude measure of a firm's reputation, however, is its size and income. Firms that grow and prosper appear to enjoy high regard for their ability to provide quality client service. Table 2 presents information about the ranking of the law firms in size and income by legal newspapers.

TABLE 2  
INFORMATION ABOUT THE LAW FIRMS

	Lawyer	Firm at Time of Misconduct	Information about Firm (Size, Reputation, etc.)
1	Edward S. Digges, Jr. \$3.1M	Digges, Wharton and Levin, Baltimore	Small litigation boutique in Annapolis, MD. The firm was founded in 1984 by Digges and two other lawyers from Piper and Marbury. Digges' reputation enabled his new firm to attract such clients as Firestone, Walt Disney, McDonnell Douglas, and Dresser Industries. (Greenberg 90)

129. The Rose Firm was founded by U.M. Rose, who was a founder of the American Bar Association. Claudia MacLachlan & Harver Berkman, *Little Rock's Bar Shaken to its Core; Local Lawyers Reeling as Washington Woes Come Home to Roost*, NAT'L L.J., Apr. 11, 1994, at A1.

130. *Id.*

	Lawyer	Firm at Time of Misconduct	Information about Firm (Size, Reputation, etc.)
2	Harvey Myerson \$2.5M	Myerson & Kuhn, New York	Among the partners at Myerson & Kuhn were Faith Whittlesey, former US Ambassador to Switzerland, and Michael Horowitz, former General Counsel at OMB. The firm employed 170 lawyers before it folded. (Presser 91)
3	Wilkes "Skip" Morgan \$2.3M	Bronson, Bronson & McKinnon, Santa Rosa office	137 attorneys as of 1996, 226th in size according to the NLJ 250.
4	H. Lawrence Fox \$1.62M	Winston & Strawn, DC office	Ranked 35th by gross revenue in the 1997 AmLaw 100 (\$187 million). 487 lawyers. Profits per equity partner of \$500,000. Pro bono grade of "B" (good) (data for 96) (AmLaw 97). <sup>131</sup> 21st largest of NLJ 250. Walter Mondale was a lawyer there after he was VP; Managing partner after Fairchild was former IL Governor James R. Thompson; firm represents General Electric, Bankers' Trust and NatWest U.S.A. (Margolick 94); "an old and famously Republican firm." (Goldberg 94) One Chicago litigator named Don Reuben said of the firm: "They always perceived themselves — and properly so — as solid, savvy, ultragentlemen, always in the know, and a part of Chicago almost from the day the Indians came." <sup>132</sup>

131. I include this information on the evaluation of the firms' pro bono performance if it is available because it may be that at firms where the pressure to produce billable hours is higher, the amount of pro bono work is less. Perhaps firms that encourage pro bono work would be less likely to impose pressure on attorneys that might encourage billing fraud.

132. Margolick, *supra* note 113, at B18.

	Lawyer	Firm at Time of Misconduct	Information about Firm (Size, Reputation, etc.)
5	Maureen Walsh \$1.48M	Chapman & Cutler, Chicago	199 attorneys as of 1996, 184th in size in the NLJ 250. 80th in <i>American Lawyer</i> list of top 100 law firms. 1992 revenues were \$84.5 million; 1992 per partner profits \$305,000. (Crains 5/30/94) Founded 1913, respected for work in banking and finance. (Anderson 94) Served as bond counsel or underwriter's counsel for Chicago for over 70 years. (Duncan 94a)
6	William F. Duker \$1.4M	Duker, Barrett, Gravante & Markel, New York	23 lawyer firm; spin-off of Cravath, Swain & Moore. (Walsh 97)
7	William Appler \$1.1M	McDermott, Will & Emery, DC office	Ranked 15th by gross revenue in the 1997 AmLaw 100 (\$281 million). 610 lawyers. Profits per equity partner of \$615,000. Pro bono grade of "C" (fair) (data for 96). (AmLaw 97) 46th in size in the NLJ 250.
8	Gary Fairchild \$784M	Winston & Strawn, Chicago	Information about Winston & Strawn appears under H. Lawrence Fox.
9	Michael X. Morrell \$500T	Akin, Gump, Strauss, Hauer & Feld, DC	Ranked 24th by gross revenue in the 1997 AmLaw 100 (\$218 million). 593 lawyers. Profits per equity partner of \$430,000. Pro bono grade of "C" (fair) (data for 96). (AmLaw 97) Number 12 in the 1996 NLJ 250.
10	Webster Hubbell \$482T	The Rose Law Firm, Little Rock	Fifty-three lawyers as of 1994. (Weisskopf 94) <sup>133</sup>

133. An interesting note about the development of the firm is that the departure of major Rose rainmaker C. Joseph Giroir, Sr. in 1988 cleared the way for the litigation department lawyers, Foster, Hubbell, Rodham, and Kennedy to take control of the firm. Kim Eisler, *Tangled*, WASHINGTONIAN, Mar. 1995, at 56.

	Lawyer	Firm at Time of Misconduct	Information about Firm (Size, Reputation, etc.)
11	James T. Crowley \$385T	Thompson, Hine and Flory, Cincinnati	Ranked 88th by gross revenue in the 1997 AmLaw 100 (\$93 million). 315 lawyers. Profits per equity partner of \$255,000. Pro bono grade of "B" (good) (data for 96). (AmLaw 97) Number 64 in NLJ 250 for 1996.
12	Timothy Flato \$300-400T	Latham & Watkins, San Francisco	Ranked 4th by gross revenue in the 1997 AmLaw 100 (\$363 million). 660 lawyers. Profits per equity partner of \$760,000. Pro bono grade of "C" (data for 96). (AmLaw 97) 6th in size according to the NLJ 250. <sup>134</sup>
13	Richard Salomon \$254T	Mayer, Brown & Platt, Chicago	Ranked 7th for gross revenue in the 1997 AmLaw 100 (\$325 million). 643 lawyers. Profits per equity partner of \$425,000. Pro bono grade of "C" (data for 96). (AmLaw 97) Ranked 8th largest firm in the NLJ 250.
14	Sherman F. Taub \$225T	Tenzer, Greenblatt, Fallon & Kaplan, New York	86 lawyers, ranked 386th in size among US law firms in 1996. (Largest 96) Ranked by <i>American Lawyer</i> in 20th place among underwriter's counsel for 1996; raised \$87.5 million. (Corrections 97)

134. Latham's average salaries for partners in 1990 were \$670,000, more than double the average at Orrick, Herrington, the firm that Flato left when he became a partner at Latham. David Newdorf, *Why Flato Jumped from Orrick to Latham*, AM. LAW., Apr. 1991, at 19. However, profits per partner declined in the 1990s. At Latham, the *American Lawyer* reported profits per partner in 1993 to average \$460,000. Barbara Steuart, *Latham Says Partner Faked Expenses*, RECORDER, Jan. 9, 1995, at 1.

	Lawyer	Firm at Time of Misconduct	Information about Firm (Size, Reputation, etc.)
15	Stanford Hess \$110T	Weinberg & Green, Baltimore	Seventh-largest law firm in Maryland. Founded in 1918. As of 1993 it had 116 lawyers, including 38 equity partners. (Mullaney 94) The Baltimore Sun reported that the firm had a "solid reputation for its work in complex banking and commercial litigation." (James 95b)
16	Scott J. McKay Wolas	Hunton & Williams, New York office	Ranked 33rd for gross revenue in the 1997 AmLaw 100 (\$190.5 million). 489 lawyers. Profits per partner of \$350,000. Pro bono grade of "A" (data for 96). (AmLaw 97) Number 27 in the 1996 NLJ 250.

## V. WHAT THE LAWYERS DID

### A. HOW THE BILLING AND EXPENSE FRAUD WAS ACCOMPLISHED

To evaluate the billing and expense fraud that occurred in these cases, one must consider the details of what was done and how it was done.<sup>135</sup> Like jurors, we then may discern the intentions of the actors. Our assessment of the wrongfulness of the conduct may be affected by whether the conduct was sloppy, negligent, reckless, or carefully calculated. Also the assessment is affected by who the thief is and what his reasons for stealing were. A poor man stealing bread for his sister's hungry child may not be as morally culpable as a wealthy person stealing an extra hundred thousand a year to add to his already six figure income.<sup>136</sup> We also might consider relevant the identities of the victims of the theft and the character of the consequences to them. To understand the nature of the billing and expense fraud committed by these lawyers, one must examine the methods by which they accomplished their misappropriations.

135. See section IC for discussion of the limitations of what can be learned from public sources.

136. See generally VICTOR HUGO, *LES MISERABLES* (Lee Fahnestock trans., Signet 1987).

TABLE 3  
METHODS OF BILLING AND EXPENSE FRAUD

	Name, Alleged Amt. Stolen, Dates of Misconduct	Methods of Billing and Expense Fraud Alleged
1	Edward S. Digges, Jr., \$3.1M 1984-1989 (Dresser 89)	<p>Digges wrote fake time sheets, engaged in expense fraud, inflated hours, billed for work not done, billed for time of persons who did no work on matters billed on, engaged in "ad hoc value billing." (St. Paul 92) One judge who reviewed the case described the methods as "almost fictional," and offered these examples: \$98,700 billed for services never performed by David Levin; almost \$500,000 for time attributed to legal assistants, medical experts and law clerks, when the work billed for was in fact done by the firm's receptionist and secretaries, and \$66,127.29 for legal and medical research that cost only \$394.98. (Dresser 89)</p> <p>Digges' partners helped cover up the billing fraud after complaints were made. The partners and their wives spent part of a weekend at the firm producing fictitious time sheets to correspond with erroneous bills that had been sent to the client. The wives were enlisted so that time sheets would reflect the handwriting of several people. (St. Paul 92)</p> <p>Digges wrote over 100 checks on firm accounts for personal expenses, claiming they were payments to "expert witnesses" or other law-related work. (Greenberg 90)</p>
2	Harvey Myerson \$2.0M fifteen year pattern (approximately 1980 to 1989) (US v. Myerson)	<p>Reporter Paul Marcotte wrote "He was accused of charging clients for time that was not used for work; tacking personal expenses for travel, jewelry and clothing onto large litigation bills to clients; and directing other attorneys to falsely record the number of hours they worked." (Marcotte 90) Partner Lloyd Clareman said that when the "upward adjustment" of a bill was insufficient, Myerson yelled: "there's no way the bills are going to go out like this. It's going to be done. And if you don't want to do it, I'll do it myself." (Marcotte 90) Partner Arthur Ruegger testified that Myerson "said 'if you can't get the bills where I tell you to, I'll find people who can.'" (Hurtado 92b)</p>

	Name, Alleged Amt. Stolen, Dates of Misconduct	Methods of Billing and Expense Fraud Alleged
		<p>Myerson's secretary said that for years Myerson regularly took thousands of dollars from petty cash and identified clients who should be billed for the withdrawals. (Hurtado 92) Partners testified that Myerson "would direct what he wanted the bills to be for particular matters or clients for particular months," and that the amounts he designated bore no relationship to the work that needed to be done for the various clients. These billing targets were announced at monthly lunch meetings. (US v. Myerson)</p> <p>Myerson was alleged to have taken more than \$400,000 from firm accounts, to have deposited a \$125,000 client check into his personal account, (Cohen 89e) and to have doubled or quadrupled the number of hours billed each month to Shearson Lehman. (Brill 89) Myerson denied inflating hours, claiming that associates did not record their time accurately. A lawyer at Shearson recalled that Myerson said "these goddam associates never know how much time they really work." (Brill 89)</p>
3	Wilkes "Skip" Morgan \$2.3M (1984 to 1991) (Osborne 92)	Morgan charged clients for costs he had not incurred and services that had not been rendered. Also he billed for over \$500,000 worth of time that he had not worked. (Osborne 92)
4	H. Lawrence Fox \$1.62M (1986-1991) (Groner 92)	Fox represented some legal fees to be expenses rather than charges for time worked. The amounts shifted were payable directly to him rather than to his law firm. Also Fox submitted false invoices to the law firm from The Keefe Co., a lobbying firm. The firm paid Keefe, who issued checks according to directions from Fox. One of the checks issued was for \$170,000, payable to Fox's wife. (Ex-Lawyer 92)



	Name, Alleged Amt. Stolen, Dates of Misconduct	Methods of Billing and Expense Fraud Alleged
5	Maureen Walsh \$1.48M (1991 to 1994) (Petition)	<p>Charged with ethical violations for billing time on closed files, claiming to have worked hours billed by associates, and billing her firm and clients for personal expenses. Walsh also was charged with inflating fees. An associate claimed that Walsh asked him to create false time records. (Goldberg 94)</p> <p>Walsh inflated legal bills to Harris Bank by \$1.1 million between '86 and May '94. She manipulated her time sheets, adding "descriptions of services which had not actually been performed, and attribut[ing] to other lawyers many . . . false descriptions of activities." (ARDC Complaint) The complaint reported that her billings to the bank were inflated by over 1,500 hours. (Stevens 94)</p> <p>Walsh billed Winston &amp; Strawn for \$248,000 of legal work that was never done. (Stevens 94) She set up files for fictitious clients and told Chapman that she had been retained to provide these services. (Rooney 96) She billed for blocks of time when she was not working during vacations with her boyfriend, a trip to testify in a friend's divorce hearing, and a period when she was hospitalized for asthma. (Buttry 96) Walsh was charged with having caused her firm to overbill clients by about \$850,000. (Indictment)</p>

	Name, Alleged Amt. Stolen, Dates of Misconduct	Methods of Billing and Expense Fraud Alleged
6	William F. Duker \$1.4M (1990-1995) (Walsh 97)	Duker intentionally overbilled the federal government and destroyed and concealed records to conceal his activities. (Duker Pleads 97) As managing partner, he reviewed the time records of associates and partners in the firm. He forwarded them to the bookkeeper with written instructions directing the bookkeeper to increase the number of hours billed above the numbers recorded by the lawyers. When audited by FDIC, Duker gathered the original time records and either concealed them or destroyed them, and directed the firm office manager to provide false information to the government. (Walsh 97)
7	William Appler \$1.1M (1986-1991) (Re Appler)	Appler billed five firm clients (four corporations and one trade union) directly without firm authorization. He claimed to be taking vacation or doing client development during some periods when he was billing these clients. (Murawski 94) Appler "had most of the payments mailed directly to his home, so that his secretary would not see them; he also forbade his secretary to open any of his mail. . . . [He] spent many hours typing up facsimile legal bills to present to the clients, himself, rather than having his secretary do them. And, of course, he kept all the records for the bills at his home." (Re Appler) He "often shifted fees to expenses and vice-versa, to make the bottom line agree with the billing totals he was submitting to his firm's accounting department." (Murawski 94) Appler deceived his firm, sometimes with the knowledge and cooperation of clients. He also deceived clients, sometimes billing over 24 hours per day, or billing one expense to two clients. He billed \$16,000 of personal expenses to one client. (Murawski 94)

	Name, Alleged Amt. Stolen, Dates of Misconduct	Methods of Billing and Expense Fraud Alleged
8	Gary Fairchild \$784T (1984-1994) (Re Fairchild)	<p>Fairchild began inflating his expenses soon after he became managing partner of Winston &amp; Strawn. A firm internal investigation concluded that he had been reimbursed by the firm for at least \$500,000 of personal expenses. Fairchild submitted for reimbursement photocopies of personal checks made out to various companies and claimed that they were business expenses. He destroyed the checks after the firm "reimbursed" him. He also submitted receipts for personal expenses (such as entertainment and a family vacation), representing them to have been business expenses.</p> <p>By mid-1993, he was claiming about \$8,000 per month in improper requests for reimbursement. (Stevens 94, Dillon 94) He hired his wife Maureen Walsh, to collect some unpaid bills for Winston &amp; Strawn, and approved payment to her firm of \$248,000 for work that was not done. (Margolick 94)</p>
9	Michael X. Morrell \$500T (1985-1990) (Torry 95)	<p>While at Akin Gump, Morrell persuaded a French pharmaceutical client to hire a dummy consulting firm he had set up (which had no clients or employees) to arrange drug testing needed for FDA approval. The client paid nearly \$1 million to the consulting firm; Morrell paid about half this amount into his checking account, his profit-sharing plan, or took it in cash. (Torry 95)</p>

	Name, Alleged Amt. Stolen, Dates of Misconduct	Methods of Billing and Expense Fraud Alleged
10	Webster Hubbell \$482T (1989-1994) (Information)	<p>Hubbell was charged with implementing a "scheme to defraud and obtain money and property from the Rose Law firm and its members, and from the Firm's clients, by means of false and fraudulent pretenses and representations." (Information) The conduct alleged (and admitted in the guilty plea) included over 400 instances of financial fraud, including: obtaining client advance checks and other firm funds to pay for personal expenses, representing that funds were for legitimate expenditures; "alter[ing] various internal billing memoranda through various means, including . . . inflating the number of hours of attorney time for which a client was billed, above the actual hours worked;" causing "client advance checks drawn on the Firm to be sent in payment of his and his family's personal expenses for credit card purchases" on ten of his credit cards." (Information)</p> <p>Hubbell was charged with illegal activity from Jan. 1989-March 1994, but Hubbell pled guilty only to fraud between 1989 and 1992. (Plea Agreement)</p>
11	James T. Crowley \$385T (1990-1992) (Re Crowley)	<p>Crowley obtained cash from his firm to pay some expenses and then requested reimbursement for those expenses. He altered expense reports and credit card receipts, increasing amounts claimed; sometimes he submitted particular expense reports for reimbursement more than one client. (Solov 93, Re Crowley 94)</p>

	Name, Alleged Amt. Stolen, Dates of Misconduct	Methods of Billing and Expense Fraud Alleged
12	Timothy Flato \$300-400T (1991-1994) (Mintz 96c)	Flato traveled about 30 weeks a year, so legitimate travel expenses were high, but he was reimbursed for more than his actual expenses. He bought round-trip tickets between San Francisco and New York, Hong Kong and London for trips he did not intend to make, cashed in the tickets with airlines, and submitted receipts to the firm for reimbursement. The criminal complaint charged him with ten such actions. (Newdorf 91) He altered receipts for meals so that the reimbursements exceeded the actual cost. (Osborne 95)
13	Richard Salomon \$214T (1990 to 1994) (Re Salomon)	Salomon overbilled Chrysler Corp. by at least \$36,905, representing that he had worked more hours than he actually had worked. He was alleged to have overbilled about 12 clients from Jan. '90 and Feb. '94. (Finkel 94; Re Salomon) Some of Salomon's clients had policies specifying limitations on payment for certain expenses. Salomon directed that bills to those clients should be altered to describe expenses that the client might not pay as expenses the client would pay. (Re Salomon) A partner said "if a client specified that it would not pay for word processing charges, Salomon reclassified them as LEXIS or photocopying charges." (Nachman 94) He also collected fees for referrals and client service which he never reported to the firm, and charged the firm for personal phone calls. (Re Salomon)
14	Sherman F. Taub \$225T (1991-1994) (Statement of Charges)	Taub charged personal expenses to the firm and to clients, including \$27,000 for flowers for his children's weddings, and the cost of meals, floral displays for the office, plane tickets and hotel accommodations for non-business-related family vacations. (Notice of Charges) Taub denied most of the charges, but admitted billing clients for airfare and hotel accommodations if he was working on a client's case during a particular vacation. He said his "clients have approved and ratified the specific expenses in question." (Answer to Charges) Taub also arranged for legal fees to be paid directly to him without firm approval. (Re Taub 96)

	Name, Alleged Amt. Stolen, Dates of Misconduct	Methods of Billing and Expense Fraud Alleged
15	Stanford Hess \$110T (1984-1987) (James 95a)	<p>Hess added extra units of time to hours billed to Fairfax (the client bank). Starting in '83 he did this by hand. (AGC v. Hess 99, note 2). In '85 Hess and Berman (President of Fairfax) agreed that the firm would give the bank a 15% discount on fees, and the bank would pay its bills on time. This discount was approved by the firm and was to take effect 1/1/86 (<i>Id.</i> at 3). The bank did not pay. Hess then began manually to increase the amounts on some pre-bills by 15% and then discount them by 15%. (<i>Id.</i> at 5) Hess then directed an accounts clerk to use a spreadsheet program that would add 15% to every bill sent to Fairfax. (James 95a)</p> <p>The judge who decided the malpractice case wrote that "Hess did not act alone. . . . Implicated in the scheme are the firm's administrative staff, the computer division and individuals in the billing department. Senior members of the firm, including executive committee members, also knew what Hess was doing and how it was being accomplished." (Bowling 95d)</p>
16	Scott J. McKay Wolas (1991-1995) (Vorobil 96)	Wolas allegedly billed clients for hundreds of hours of work that he did not do; he continued to bill for legal work after he began to spend most of his time on liquor investing that involved a \$100 million Ponzi scheme. (Davis 97)

Many of the techniques described did not involve either "failure of judgment" or "puffery", but reflect shameless, pre-meditated chronic thievery. Investigation of Webster Hubbell turned up hundreds of instances of financial fraud.<sup>137</sup> Edward Digges, his partners, and their wives spent a weekend fabricating time sheets to

137. See *United States v. Hubbell*, No. LR-CR-94-241, Information, Charging Document by Independent Counsel, (E.D. Ark. 1994).

put to rest a client's suspicions of billing fraud.<sup>138</sup> William Appler spent hours rewriting bills to attempt to increase his income and conceal his fraud.<sup>139</sup> Maureen Walsh set up files for fictitious clients.<sup>140</sup> Stanford Hess directed that a computer program be set up to inflate fees systematically.<sup>141</sup>

All of these people were licensed to practice law. Most of them undoubtedly had some knowledge of the rules of ethics. Webster Hubbell chaired the commission that proposed the adoption of a version of the Model Rules of Professional Conduct in Arkansas. How did these lawyers justify their behavior to themselves? Did they become masters of rationalization and self-deception, or did they lie awake at night tormented by guilt and fear of detection?

Many of the lawyers engaged in billing fraud over a period of years without detection. Did others in their law firms know what they were doing? If so, why were they not stopped? Were other lawyers in their firms engaged in similar practices? Were some partners aware of the misconduct but reluctant to intervene because they were profiting from their partners' behavior, or because of fear of harm to the firm's reputation? Even if the lawyers didn't intervene, why didn't accountants or secretaries raise questions? The methodical multi-year patterns of fraud suggest profound failures of individual integrity and institutional failures.

The inventory of methods used to commit billing and expense fraud reveal why some methods were preferred over others. A lawyer can obtain money more directly through expense fraud than by inflation of hours. When Timothy Flato was "reimbursed" for plane tickets he never used, he "cash[ed] in" his tickets and then submitted the receipts to his firm.<sup>142</sup> If a lawyer inflates his hours, his annual billables increase, and his annual draw might be larger. But because the client usually pays the inflated fee to the firm, the lawyer receives no direct financial benefit. This may explain why William Appler and Richard Salomon illicitly billed some clients directly.<sup>143</sup>

Another variable in choice of methods is taxation. Reimbursement for business expenses ordinarily would not be reported as income, so the lawyers would not

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138. See *St. Paul Ins. Co. v. Dresser Indus., Inc.*, 972 F.2d 341 (4th Cir. 1992) (unpublished opinion).

139. *In re Appler*, 669 A.2d 731, 734 n.5 (D.C. Ct. App. 1995).

140. John Flynn Rooney, *Grand Jury Indicts Fairchild: Stole \$900,000*, CHI. DAILY L. BULL., Nov. 14, 1996, at 1.

141. Jane Bowling, *Weinberg Rainmaker Hess Admits Padding Work Hours*, DAILY REC., Apr. 26, 1995, at 1. Maureen Walsh's attorney, George Collins, stated that Chapman & Cutler, Walsh's firm, had a similar system under which a lawyer could key in a command to the computer billing system that would add ten percent to the hours to be billed to a client. Collins said the lawyers added this premium when they believed that the work done had been of particular value to the client. Telephone interview by research assistant Theresa J. Fuentes with George Collins (Sept. 18, 1997).

142. D.M. Osborne, *A Career Unravels at Latham*, AM. LAW., Mar. 1995, at 19.

143. John Murawski, *Should William Appler Be Disbarred: Ex-McDermott, Will Partner Claims Mental Illness Drove Him to Embezzle \$1 Million From Firm*, LEGAL TIMES, Jan. 3, 1994, at 1; *In re Salomon*, MR 10420 (Ill. S. Ct., Sept. 23, 1994).

pay income tax on phony or inflated reimbursements. A perpetrator of expense fraud would keep one hundred percent of the dollars stolen, while a time sheet inflator might increase his annual salary or bonus by billing more hours, but even if he did so he would keep only the after-tax portion of his inflated income. Perhaps these issues were part of the thinking of H. Lawrence Fox, who characterized some hourly fees as expenses. The amounts then were payable directly to him rather than to the firm and were not taxed.<sup>144</sup>

The methods of billing and expense fraud inventoried in Table 3 are those that could be detected and proven by investigators. Expense fraud is considerably easier to detect than billing fraud, because some items purchased (for example Harvey Myerson's \$89,000 gift purchased at Cartier<sup>145</sup>) obviously are not expenses associated with the delivery of legal services. Inflated hours are more difficult to identify. The methods actually used by these lawyers to increase their incomes may be more diverse than those described here.

#### B. WHAT THE LAWYERS BOUGHT WITH THE MONEY

Much criminal activity is responsive to the kinds of things for which we stand. Individualism, hedonism, materialism — these are criminogenic values: they have utility for the production of many social and individual boons, they may be preferable on some grounds to different social emphases. But they have their price, and part of that price clearly appears to be the phenomenon of white-collar crime.<sup>146</sup>

We don't know most of what these lawyers did with the bulk of the money they obtained improperly. A sample of the uses of these funds is available, because some of the lawyers asked the firm or their clients to reimburse them for personal expenses, and some of those improper reimbursements were later traced and identified. Examining what the lawyers did with even a portion of the stolen money may help to understand the motivation for the billing and expense fraud. In some cases it is clear that stolen funds were used for items listed below. In other cases luxury purchases are listed simply to illustrate the lawyer's standard of living, which may have been supported by billing or expense fraud.

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144. Jonathan Groner, *Who Was Bilked; Ex-Winston & Strawn Partner Probed on Theft Allegations*, LEGAL TIMES, Aug. 5, 1991, at 1.

145. Brill, *supra* note 51.

146. James William Coleman, *The Theory of White-Collar Crime from Sutherland to the 1990s*, in WHITE COLLAR CRIME RECONSIDERED 53, 61 (Kip Schlegel & David Weisburd eds., 1992) (quoting a study by Meir and Geis).



TABLE 4  
WHAT THEY BOUGHT<sup>147</sup>

	Name & Alleged Amt. Stolen	How the Lawyers Spent the Stolen Money
1	Edward S. Digges, Jr. \$3.1M	Spent about \$1.2 million to renovate Hinchingham, his 310 acre pre-Revolutionary War estate on the Eastern Shore of Maryland. (Groner 89, Geyelin 89, Greenberg 90) Expenses included "electrical and architectural work, painting, carpentry, well-digging, landscaping, furnishings, antiques, a satellite TV system," and other things. (Greenberg 90)
2	Harvey Myerson \$2.5M	Improperly charged to Webster & Sheffield among other things, personal trips to Japan and Spain, and his season hockey tickets. While at Myerson & Kuhn, used a firm check to purchase a ring at Cartier's for a female friend that cost \$89,000. (Brill 89, Geyelin 90) He also used firm funds for vacations with his family, suits and fur coats. (Geyelin 90) Other expenditures included "dog food, dry cleaning for his clothes and toupee, . . . Concorde tickets, chartered helicopter rides, lawn furniture, Cuban cigars, Hermes scarves, dresses at Giorgio of Beverly Hills, visits to the spa at Baden-Baden, Germany, a \$20,000 weekend at the Kentucky Derby." (Hurtado 92a) Myerson's personal chauffeur was paid by the firm, listed as a "messenger." (Brill 89) During his summation in the criminal trial, Myerson said to the jury: "I'm entitled to spend any of my money for whatever I want to spend it on." (Hurtado 92a)
3	Wilkes "Skip" Morgan \$2.3M	Morgan reportedly "stole funds to support a lavish lifestyle that including restoring World War II aircraft, owning six cars, including two BMWs and a Mercedes, and cruising on a 22-foot boat." (Dietz 92)

147. Where information was not available on a lawyer's purchases, the lawyer's name is omitted from the table.

	Name & Alleged Amt. Stolen	How the Lawyers Spent the Stolen Money
4	H. Lawrence Fox \$1.62M	Purchased three Jaguars, first class trips to Europe, several thousand for a Rolex watch, \$16,000 for season tickets to Redskins games, \$3,800 for bicycles, and improperly charged for personal expenses such as interior decoration and renovations for homes in Alexandria, VA and Nag's Head, NC, corned beef shipped from a deli in New York, memberships in athletic clubs. (Fox 92, Outfoxed 92)
5	Maureen Walsh \$1.48M	Hosted a birthday party for a friend at the Four Seasons Hotel that included makeup, manicures, massages, and lunch. The party was billed to the firm as a seminar and lunch for minority business owners. (Rooney 96b) She billed as business expenses vacations in the Caribbean and Sun Valley, Idaho with her male friend, and tickets to Broadway shows. (O'Connor 96) She hired a public relations consultant to create favorable publicity at the time of her husband's resignation from Winston & Strawn and submitted the bill to the firm for reimbursement, claiming that this service had been performed for another client. (O'Connor 96) She billed the firm and clients for the cost of a high school reunion trip to the Caribbean for herself and three friends. (Buttry 96)
6	William F. Duker \$1.4M	Duker reportedly purchased a "luxurious vacation home in Miami and kept a yacht in Newport, R.I." (Barrett 97)
7	William Appler \$1.1M	Appler bought 900 bottles of wine. He billed clients \$15,000 for meals and other personal expenses. He went on "wild shopping spree spending \$120,000 on wine and \$40,000 on ceramics." (Murawski 94)

	Name & Alleged Amt. Stolen	How the Lawyers Spent the Stolen Money
8	Gary Fairchild \$784T	Charged at least \$500,000 in personal expenses to the firm, including club memberships, insurance premiums, and tickets to entertainment. (Herman 94) He also billed as business expenses maid service, orthodontist bills, and plumbing work. (O'Connor 96) He also bought clothing, jewelry, furniture, catering services, and paid apartment fees using funds charged to the firm or to clients. (Samborn 95)
9	Michael X. Morrell \$500T	Charged the firm for personal expenses such as parking, DC Bar dues, credit card bills, tickets to basketball games at Georgetown, and club memberships. Also made donations to Friends of the Kennedy Center (which he chaired). (Torry 95)
10	Webster Hubbell \$482T	Hubbell had four children in private schools and a wife who loved to shop. He also had \$106,000 in credit card and unsecured loan debt and a \$400,000 mortgage. Colleagues thought that Hubbell's billing fraud was motivated by a desire to maintain his lifestyle. (Labaton 94)
11	James T. Crowley \$385T	Used firm funds to pay medical and nursing home expenses for his ailing mother; charged the firm for personal travel, auto repairs, and items bought at Victoria's Secret. During the time when the financial misconduct occurred he hosted lavish parties and paid tuition at private colleges for his two children; (Solov 93a, 93b) The expense padding continued three years after Crowley's mother's death until he left the firm. (UPI 93)
12	Timothy Flato \$300-400T	Less extravagant than some of the others, Flato saved some of the money he stole and spent some of it on home improvements. (Mintz 96b)
13	Richard Salomon \$214T	One of Salomon's partners said Salomon "didn't pocket any of the money, and the number of hours billed were not relevant to decisions about compensation of partners." (Nachman 94)
14	Sherman F. Taub \$225T	Charged the firm for personal expenses such as airplane tickets, hotel rooms, meals, flowers for his children's weddings. (Adams 94, Update 96)

Many of the lawyers used stolen funds to purchase expensive luxury items, Jaguars, a Rolex watch, a fur coat. A few used some funds for tickets to sporting events or shows, or for membership in exclusive clubs. Several of the lawyers used some of the money for home improvements. Timothy Flato is described as frugal and as having saved some of the money.<sup>148</sup> Webster Hubbell is described as not having expensive tastes or wearing expensive clothes.<sup>149</sup> Some of the others were clearly interested in high-end living. Harvey Myerson was chauffeured around in a Cadillac limousine driven by a chauffeur whose salary was paid by his firm.<sup>150</sup> The Fairchilds lived in one of the most exclusive apartment buildings in Chicago.<sup>151</sup> Ed Digges bought a large historic estate.<sup>152</sup> Bill Duker bought a luxury vacation home and yacht.<sup>153</sup>

There are threads of simple greed in these stories. All of these lawyers earned six-figure salaries before they began fraudulent inflation of their bills and expenses. Some of them, including Maureen Walsh and Ed Digges, came from wealthy families. Harvey Myerson was compared by a judge to the protagonist in *Bonfire of the Vanities*, a master of the universe whose income needs grew faster than his income. But many of the lawyers were not simply motivated by greed. Maureen Walsh and perhaps Richard Salomon inflated their hours in a manner that would produce no direct increase in their incomes. Timothy Flato seems to have been driven by a compulsion that was not much affected by greed. Stanford Hess claimed he was just recouping what he was entitled to from a client who wasn't paying the bills on time.<sup>154</sup> Perhaps for some of the lawyers obtaining extra money was a method of winning a competition with their partners over the division of the law firm pie.<sup>155</sup>

One thing that comes through clearly in this composite picture is that there is little in the way of mitigating circumstances, and not the slightest hint of altruism. James Crowley used some of the money to pay for medical and nursing home expenses for his elderly mother.<sup>156</sup> None of the others appear to have any morally defensible claim to needing extra income.

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148. Howard Mintz, *The Meltdown of Timothy Flato*, RECORDER, July 24, 1996, at 1.

149. Stephen Labaton, *Hubbell Friends Try to Visualize Pillar of Community as Thief*, COM. APPEAL, Dec. 28, 1994, at A4.

150. Patricia Hurtado, *Just Like "L.A. Law"*, NEWSDAY, Apr. 23, 1992, at 120.

151. Stephen Buttry, *Lawyer Admits \$2 Million Fraud of Firm, Clients*, OMAHA WORLD HERALD, Dec. 20, 1994, at 1.

152. Greenberg, *supra* note 128.

153. Paul M. Barrett, *William Duker Reaps Riches of His Profession*, WALL ST. J., Sept. 20, 1997, at A1.

154. Berkman, *supra* note 24.

155. Sources for the information in this paragraph are identified in Appendix D.

156. Diane Solov, *Lawyer Took \$225,000 from Clients, Partners; Disciplinary Panel to Decide on Sanction*, PLAIN DEALER, Oct. 30, 1993, at 1F.

How then are we to understand what these lawyers did? One point of reference is the work of John Braithwaite, who compares economic crime by poor and wealthy people and finds economic inequality to be a dominant factor in explaining the activities of both white and blue collar criminals.<sup>157</sup> Braithwaite posits that "inequality increases crime by (1) decreasing the goods available for use by the poor to satisfy needs; and (2) increasing the goods available to rich people (and organizations) who have needs satisfied, but whose accumulation of goods for exchange constitutes criminal opportunities to indulge greed."<sup>158</sup> Avaricious behavior by wealthy people, then, may be in part caused by their disproportionate access to a high standard of living, which may have the effect of stimulating greed.

## VI. WHY DID THEY DO IT?

The "why" question has always intrigued criminologists . . . but it seems to have special appeal in white-collar crime cases. This is, in part, because white-collar crime seems counterintuitive. We can understand intuitively why those who are down-and-out may commit economic crimes, . . . . But these forms of reasoning apply less easily to persons well placed in the society, who have more in the way of material goods to begin with and who have much to lose if caught in the commission of crimes.<sup>159</sup>

### A. "FEAR OF FALLING"

White collar crime<sup>160</sup> has been studied extensively. Social scientists have worked since the 1930s to understand both individual and institutional dynamics that explain, cause or permit white collar crime to occur. Wheeler points out that part of the fascination of studying white-collar crime is to understand why people

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157. See generally John Braithwaite, *Poverty, Power, and White-Collar Crime: Sutherland and the Paradoxes of Criminological Theory*, in WHITE COLLAR CRIME RECONSIDERED 78 (Kip Schlegel & David Weisburd eds., 1992).

158. *Id.* at 81.

159. Stanton Wheeler, *The Problem of White-Collar Crime Motivation*, in WHITE COLLAR CRIME RECONSIDERED 108-09 (Kip Schlegel & David Weisburd eds., 1992).

160. David Friedrichs identified some features that define white collar crime, including "trust and its violation" that the actors are respectable people who take risks. He says that in white collar crime, "a calculated gamble is taken; the chances of being caught and punished are quite remote compared with the benefits that accrue from committing the crime." Friedrichs would include the study of billing and expense fraud by lawyers as "occupational crime," one subspecies of white collar crime. He defines occupational crime as "illegal or harmful financially driven activity committed within the context of a legitimate, respectable occupation. Forms include retail crime, service crime, crimes of professionals, and employee crime." FRIEDRICHS, *supra* note 2, at 9, 11, 12, 14.

who have great material wealth, professional reputations, and institutional power engage in conduct that risks the loss of all of the above. Some researchers have focussed on the study of individuals who engage in white collar crime, looking at motives, values, skills, and at the circumstances that created the opportunity for their activities.<sup>161</sup> Some examine the social values or organizational structures that permit or encourage white-collar criminal activity.<sup>162</sup> Others investigate the phenomenon of "criminalization," in which certain events once not defined as criminal come to be regarded or legally defined as criminal.<sup>163</sup> When conduct once acceptable becomes criminal, those who fail to acknowledge the shift in law and values may continue to engage in the conduct with only dim awareness of the risks involved.<sup>164</sup>

Some scholars suggest that there are significant personality differences between people who commit white-collar crime and those who do not.<sup>165</sup> One researcher articulated a personality profile of white collar offenders, urging, according to sociologist David Friedrichs, that they are "clever, easily frustrated, aloof, and quite creative in rationalizing their illegal conduct."<sup>166</sup> Another study compared the personalities of 350 jailed white collar criminals and 350 undicted corporate executives. Those in prison were less rule-oriented, less dependable, and less responsible than the noncriminal group.<sup>167</sup> Others observe that white collar criminals, like most people, are primarily motivated by a rational analysis of their own interests.<sup>168</sup> The literature on white-collar crime provides useful perspectives through which to examine lawyer billing fraud and allows comparison of the individual and institutional causes and consequences of billing fraud and other white collar criminal activity.

Could these accomplished people have suffered some deficit in their professional education? Five of them graduated from law school before 1970<sup>169</sup> and

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161. *Id.* at 214.

162. *Id.*

163. *Id.*

164. Common examples of this pattern include the resistance of some adults to wearing seat belts or placing small children in car seats. See Todd Beamon, *Police Urge Residents to Buckle Up*, WASH. POST, May 29, 1997, at J1 ("Only 68 percent of the drivers and passengers in the 49 states with mandatory seat belt laws use the devices, according to the National Safety Council. And of the 3, 328 children age 16 and younger who were killed in traffic accidents, only 35 percent wore seat belts or were in child safety seats, according to the National Traffic and Safety Administration.") Some do not know that these precautions are required by law. Others know the law but elect not to comply, believing that the rules are wrong or for some reason do not apply to them. See Mark Curnutte, *Buckling Up in the Back: A Seat Belt Might Have Saved Princess Diana, but Should Wearing One be Law?*, CINCINNATI ENQUIRER, Sept. 26, 1997, at D1 (noting that opponents of seat belt legislation state that requiring seat belt use is unjust government intrusion and seat belt tickets unnecessarily clog up the courts).

165. FRIEDRICH, *supra* note 2, at 217.

166. *Id.*, citing W. Criddle, *They Can't See There's a Victim*, N. Y. TIMES, Feb. 22, 1987, at E3.

167. *Id.*, citing J. M. Collins & F. L. Schmitt, *Personality, Integrity, and White Collar Crime: A Construct Validity Study*, 46 PERSONNEL PSYCHOL. 295 (1993).

168. *Id.* at 225.

169. Harvey Myerson (1964), H. Lawrence Fox (1964), William Appler (1969), Gary Fairchild (1969), Stanford Hess (1966). See Appendix B.

may not have had a course in professional ethics. Even so, these lawyers undoubtedly learned basic concepts of honesty and integrity from their families, schools, and communities. Many or perhaps most of these lawyers are honest and decent people.<sup>170</sup> There are a few who may have been power-hungry or unscrupulous, but not most of them. The question, then, is what caused these lawyers to behave in ways inconsistent with basic notions of honesty and integrity?

One possible explanation for the billing and expense fraud of these lawyers is that they were so successful that they became fearful of loss of professional or financial status. Like straight-A students who feel pressure to maintain perfect grades, some of these lawyers may have been affected by what sociologist Stanton Wheeler describes as “fear of falling.”<sup>171</sup> In a 1991 study, Wheeler and some colleagues posited that some white-collar criminals

would be reasonably happy with the place they have achieved through conventional means if only they could keep that place. But the fate of organizational success and failure, or the changing nature of the economy in their line of work, may put them at least temporarily under great financial pressure, where they risk losing the lifestyle that they have achieved. They may perceive this situation as a short-term threat that can be met through short-term fraud — a temporary taking to be restored as soon as business fortunes turn around. The motivation for their crime is not selfish ego gratification, but rather the *fear of falling* — of losing what they have worked so hard to gain.<sup>172</sup>

Wheeler suggests that this phenomenon helps to explain the disastrous financial collapse of Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey and that of Myerson & Kuhn. Harvey Myerson was the managing partner of both of firms.<sup>173</sup>

#### B. ABSENCE OF STABLE PROFESSIONAL BONDS

Sociologist David Friedrichs reports that some social science research has concluded that “people with strong bonds (attachment, commitment, involvement and belief) to conventional institutions (such as the family, the school and the church) are constrained from engaging in delinquent or criminal conduct.”<sup>174</sup>

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170. See Wheeler, *supra* note 159, at 109 (“[M]any white-collar offenders have led lives not only unmarked by prior trouble with the law, but characterized by positive contributions to family and community life.”). While the background of these lawyers seems surprising in light of their subsequent conduct, then, this discontinuity apparently is observed among other white collar offenders.

171. *Id.* at 115.

172. *Id.* at 117. Wheeler explained further that “[t]he logic [of fear of falling] applies as well to the loss of status and prestige as to the loss of money. It might explain why someone like former president Nixon would engage in a massive cover-up and obstruction of justice rather than suffer the drop in prestige that would have occurred had he acknowledged . . . [the plumbers] burglary.” *Id.*

173. *Id.* at 114–15.

174. FRIEDRICHS, *supra* note 2, at 228. Friedrichs reports that one study by Lasley found that “automobile

The declining stability of individual and institutional bonds in the legal profession may have reduced the collective perceived constraints on illegal or unethical conduct. As income generation has become a central objective of law practice,<sup>175</sup> financial competition among partners in law firms has intensified. Lawyers who switch firms have shorter and less stable relationships with their partners than do those who practice in one firm for their entire careers. Some firm-switchers might be less constrained from billing fraud than those who have built relationships over decades.

Many of the lawyers in this sample switched firms at least once. While this frequency of movement may be typical of law firm partners in the 1990s, perhaps the decreasing degree of continuity and institutional loyalty in many law firms contributes to an increase in the frequency of billing or expense fraud. Lawyers move from firm to firm, individually and in groups, often motivated by the prospect of higher incomes. This appeared to be a central reason why Timothy Flato left Orrick, Herrington & Sutcliffe in 1991 to become a partner at Latham & Watkins.<sup>176</sup> These sixteen lawyers worked at at least thirty-two different private law firms. Seven were affiliated with only one law firm, but five worked at two firms, two at three firms, one at four firms, and one at five firms. Some of the moves occurred because of individual initiative, a few were the product of firm mergers. In some instances financial ambition appears to have been a factor. Three of the lawyers, Edward Digges, Harvey Myerson, and William Duker, established their own firms after having worked at some of the largest firms in the country. In each case the lawyer became the managing partner of the new firm. If one motive to set up a new firm was to increase the lawyers' income, one result may have been a reduced level of financial monitoring.

### C. BAD APPLES?

Who are these lawyers? What can one learn about their values, their ambitions, and their motives for billing fraud by looking at their backgrounds, interests, hobbies, demographic characteristics, and personalities? The collective picture of these lawyers shows some commonalities and many divergences. One cannot confidently correlate any personal characteristics with the lawyers' dishonest behavior; I simply note a few patterns among the lawyers.

Fifteen of the sixteen lawyers are Caucasian males who were in senior

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corporation executives with strong corporate attachments and commitments were less likely to report that they had committed white collar offenses against their employers than were peers with weaker such bonds." *Id.*, citing J. R. Lasley, *Toward a Control Theory of White-Collar Offending*, 4 J. QUANTITATIVE CRIMINOLOGY 347 (1988).

175. See John J. Marquess, *Legal Audits and Dishonest Legal Bills*, 22 HOFSTRA L. REV. 637, 639 (1994) (citing annual survey of law firm performance measurement techniques).

176. David Newdorf, *Top Orrick Rainmaker Defects to L.A.'s Latham*, RECORDER, Feb. 20, 1991, at 1; Newdorf, *supra* note 134, at 18.



positions at respected law firms. Most of them were in their forties or early fifties at the time that their billing fraud was discovered.<sup>177</sup> Many engaged in billing fraud over a period of years, often during their forties. Perhaps this simply describes an age bracket in which some ambitious lawyers reach positions of power in their law firms; for some it also is a period of mid-life crisis. The lawyers' backgrounds are heterogeneous. Some are from wealthy families, others are not. Their fathers were lawyers, businessmen, law enforcement officers, and in other types of work. Some are Republicans, some Democrats. Among them are Catholics, Protestants, Jews, and people with no identified religious affiliation. The group includes some "solid family men" and others who had extramarital relationships and/or multiple divorces. All of the lawyers for whom such information is available have been married at least once; all but one (of the twelve for whom this information was available) have at least two children. Some of them fathered several children. At least two of them have five children (Digges and Myerson), one has four children (Hubbell), and three have three children (Fairchild, Flato and Hess). Perhaps the number of offspring is related to their economic success — in other words, they didn't have to worry about whether they would be able to pay for college for more children.<sup>178</sup>

Some of the lawyers were collectors. William Appler had an impressive collection of wine.<sup>179</sup> Scott Wolas collected antique toy soldiers.<sup>180</sup> Gary Fairchild collected suspenders. Richard Salomon collected stamps.<sup>181</sup> Judging by the fact that he used stolen funds to purchase three of them, H. Lawrence Fox collected Jaguars.<sup>182</sup> There is some suggestion that Webster Hubbell's expense fraud was partly designed to cover the cost of his wife's frequent shopping sprees.<sup>183</sup> This pattern of collections may have no significance at all; many people enjoy collecting various things. But perhaps these lawyers' interest in collecting things or shopping reflects a tendency toward compulsive acquisition that might be connected to their billing fraud. It would not be surprising to find some psychological commonality among these people who manipulated time sheets and expense vouchers.<sup>184</sup>

The lawyers appear to have widely divergent personalities. Some are described by friends or colleagues as aggressive, driven, ambitious people. Harvey Myerson was described as "abrasive" and the "Agent Orange of the legal profes-

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177. I subtracted the year of birth for those for whom I had that information from the year in which the allegations of billing fraud became public (based on published sources) and determined that their approximate ages when caught were as follows: Walsh (39); Salomon (41); Digges, Duker and Flato (43); Hubbell and Morgan (46); Myerson (50); Fairchild (51); Fox and Hess (52); Appler (53). See Appendix D.

178. Sources for the information in this paragraph are identified in Appendix D.

179. Murawski, *supra* note 143, at 1.

180. Mary Voboril, *A Lawyer on the Lam*, *NEWSDAY*, June 5, 1996, at B4.

181. *WHO'S WHO IN AMERICA*, 1992-93, Vol. 2 (47th ed. 1992).

182. *Outfoxed*, *LEGAL TIMES*, July 6, 1992, at 3.

183. Labaton, *supra* note 149, at A4.

184. See *infra* section VI-D.

sion,"<sup>185</sup> H. Lawrence Fox as argumentative and a bully,<sup>186</sup> Timothy Flato as "a hard-charging lawyer," "intense and obsessed,"<sup>187</sup> Scott Wolas as a "pit-bull litigator."<sup>188</sup> In contrast, Gary Fairchild was polite and gentlemanly; he could hardly bring himself to use the words necessary to inform some lawyers that they had been laid off.<sup>189</sup> Webster Hubbell enjoyed the respect and admiration of many of the lawyers who worked with him, not only as an able lawyer, but as a really nice guy who had good judgment and a strong sense of fairness.<sup>190</sup> Perhaps in some cases there are personality clues that might suggest that a person lacked the integrity or the sense of self-restraint necessary to be fair and accurate in billing clients. But some people who engage in significant billing fraud seem among the least likely suspects.

#### D. MENTAL ILLNESS?

Perhaps there is a medical explanation for these billing fraud cases. One might hypothesize that no self-respecting professional in his right mind would engage in a pattern of dishonest behavior that, if discovered, would destroy his or her career. There is evidence that the percentage of lawyers who suffer from depression is much higher than in many other professions;<sup>191</sup> perhaps these cases reflect a disintegration that is produced by institutional pressure. One researcher posited that some white collar crime, like other crime, is motivated at least in part by a desire for the excitement or thrill that accompanies the risks and rewards of financial fraud.<sup>192</sup> Mental disturbance of one sort or another could be a factor in this type of thrill-seeking behavior. Some of the lawyers accused of billing fraud introduced psychiatric testimony in an effort to avoid disbarment or to reduce prison sentences. This provides some data which is useful in thinking about the psychological ingredients of these cases.

At least seven of these lawyers presented psychiatric testimony to the effect that their professional misconduct was caused, at least in part, by mental illness.

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185. Andy Blum, *Bookshelf: Law and Hate*, WALL ST. J., Oct. 9, 1990, at A20.

186. Jonathan Groner, *Ex Winston & Strawn Partner Probed on Theft Allegations*, LEGAL TIMES, Aug. 5, 1991, at 1.

187. Steuart, *supra* note 133, at 1.

188. Ann Davis, *Proud Firm Defends Its Reputation, Sullied by a Vanished Ex-Partner's Outside Deals*, NAT'L L.J., May 13, 1996, at A1.

189. Stephanie B. Goldberg, *Partnership of Trouble; Embezzlement Scandal of Law Firm Winston & Strawn*, CHI. MAG., Dec. 1994, at 84.

190. Labaton, *supra* note 149, at A4.

191. Professor Manuel Ramos notes that "Lawyers, some say, experience more mental health problems than the population at large. Compared with persons involved in 104 other occupations, lawyers are almost four times as likely to suffer from depression as the average person." Ramos, *supra* note 53, at 1699, citing William W. Eaton et al., *Occupations and the Prevalence of Major Depressive Disorder*, 32 J. OCCUPATIONAL MED. 1079, 1083, 1086 (1990). The study cited by Professor Ramos indicates that the "rate of alcoholism and depression among lawyers is two to three times the national average." *Id.* at 1716.

192. FRIEDRICHS, *supra* note 2, at 228, citing J. KATZ, *SEDUCTIONS OF CRIME: MORAL AND SENSUAL ATTRACTIONS OF DOING EVIL* (1988).

Digges and Appler were found to have narcissistic personality disorder. Appler was also found to have manic-depressive illness (also called bipolar disorder) and to have engaged in alcohol abuse. Walsh was found to have developed a manic-depressive state in part as a result of taking prednisone and tranquilizers. Salomon was found to have obsessive-compulsive personality disorder. Flato was found to be suffering from depression and anxiety. On the other hand, various people who were familiar with the professional performance of Digges, Morgan, Walsh, or Flato commented about each of them that they did not believe that these lawyers were suffering from mental illness. Some of the comments reflected skepticism about the psychiatric reports.<sup>193</sup>

Maybe the psychiatrists and the skeptics are all correct in their observations. These people were all highly-educated, intelligent, competent professionals who displayed superior performance in many professional activities. Most were high-functioning overachievers. They are a far cry from patients languishing in mental hospitals. On the other hand, one sees in these cases patterns of intense ambition, compulsive behavior and perfectionistic tendencies that reflect various degrees of disturbance. The billing fraud itself suggests some degree of mental disturbance because the behavior has such self-destructive potential. A mental health professional might find a diagnosis that would describe any of these sixteen lawyers. Perhaps, in fact, anyone accused of criminal conduct could be described as having some sort of mental disorder. And, to turn the picture around, one might look around the law firms that employed these lawyers and find many professionals not engaged in billing fraud who exhibit some degree of mental disturbance.

The mental health picture offers one important perspective on these stories, but it raises as many questions as it answers. There is no bright line by which to conclude that some of the lawyers' conduct can be explained by reference to individual psychology while others are morally culpable competent people. These lawyers exhibit different degrees of mental disturbance. The extensive and credible evidence presented about William Appler would place him at one end of the spectrum. He suffered from a serious disorder that is widely recognized to cause behavioral disturbance. His billing fraud apparently occurred during a period when he had stopped both medication and psychotherapy. Some of the other lawyers were known to be obnoxious or aggressive or otherwise difficult to work with, but none was conspicuously mentally ill.

#### E. THE LAWYERS' EXPLANATIONS

The lawyers' public comments about their misconduct, made after the charges became public, offer snapshots of their reactions to the charges when first made and, in some cases, of their publicly expressed sentiments prior to sentencing.

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193. Sources for the information in this paragraph are identified in Appendix E.

These comments, which are collected at Appendix F, cannot be presumed to reveal the lawyers' true feelings — they were comments made in public, often for a specific instrumental purpose, damage control or sentence reduction. Nevertheless, they offer a window into the lawyers' view of their own conduct.

### 1. Denial and Rationalization

One striking pattern among the lawyers' statements is how many of them reacted to the charges of billing fraud by denying any wrongdoing. Many of their initial statements suggested that the very idea that they would engage in financial misconduct was preposterous. William Duker commented that the government audit "was an administrative annoyance that at worst would be settled with a reimbursement to the government."<sup>194</sup> Harvey Myerson denied that there were any financial problems in the firm. Maureen Walsh's lawyer asserted that the accusations against her husband bore no relationship to her. Michael Morrell's lawyer said all the charges against him were incorrect. Webster Hubbell painted his situation as a sort of gentleman's spat between himself and his partners.<sup>195</sup>

How real were these denials? Did these lawyers persuade themselves that there was nothing improper in their own conduct? Might the denials have been disingenuous, intended to induce prosecutors to make lesser charges? Lawyers are trained to rationalize, to place events in a favorable light. Did some of these lawyers snooker themselves? Could a managing partner in a law firm add a digit to a credit card receipt to increase his reimbursement and not know that he was doing something improper? Could he persuade himself that he was simply recouping unreimbursed expenses for which he had forgotten to get receipts? Could he persuade himself that the inflation of hours on a timesheet was legitimate because his partners were doing it also, or because a particular client could afford to pay extra, and other clients would not be able to pay?<sup>196</sup> Some lawyers who engage in billing or expense fraud rationalize in this manner, and sometimes their sense of financial propriety slips. One lawyer I interviewed whom I called "Michael Williams" described the impact on his values of his work in a large law firm:

I think law firms have stretched or redrawn many lines, and it's hard to think of something that one can't justify doing . . . . It is a different world than it was

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194. Barrett, *supra* note 153.

195. Sources for the information in this paragraph are identified in Appendix F.

196. "Michael Williams" (not his real name), a large-firm lawyer I interviewed for *Lying to Clients*, *supra* note 97, said many lawyers at his firm would think: "[W]ell they are a rich client, they can pay, we can put a couple more hours down than we worked." Of his own attitudes he commented: "My billing is certainly influenced by the size and ability of the client to pay. There's pressure to bill . . . at least eight hours a day and I generally bill as much as I can to the richest client [and underbill] clients who can't afford standard rates. . . . It's rough justice." *Id.* at 709.

twenty years ago. I don't think some things that are generally accepted [now] would have been accepted then.<sup>197</sup>

A lawyer named Thomas Schneider was disciplined for expense fraud that occurred in 1981, when he was a first year associate at Seyfarth, Shaw, Fairweather & Geraldson.<sup>198</sup> Schneider collected \$800 extra in travel reimbursements by altering eight credit card receipts; he put a "1" before the amount listed, overstating each expenditure by \$100. The D.C. Court of Appeals described Schneider's explanation for this behavior:

The hearing committee found that Schneider was attempting only to recoup money that he believed he personally had advanced for other legitimate client-related travel expenses. He believed each of these eight alterations represented an accurate estimate of his out-of-pocket expenditures for the client and were no more than the amount of money he believed he had advanced for the client.<sup>199</sup>

Schneider was suspended from practice for thirty days.<sup>200</sup> Schneider's rationalization reflects at best a rough estimate of other expenses for which he might have been entitled to reimbursement if he had kept some records of them. It is not likely that he had eight sets of unreimbursed expenses of exactly \$100 each. Schneider's explanation illustrates how a lawyer might skip over the improper aspects of his own conduct and look for a plausible justification. Did Schneider consider whether this was a proper means of obtaining reimbursement? Did he consider how his employer or his client would react to this practice if it were disclosed? One D.C. Court of Appeals judge even suggested that the wrongfulness of deceptive behavior depends on the materiality of the gain.<sup>201</sup>

The ability to rationalize is undoubtedly a useful tool for lawyers engaged in billing and expense fraud. In the Schneider case this process seems understandable (not to be confused with excusable), since the lawyer in question was inexperienced and the amount of money involved was small. It is more striking to find experienced lawyers (whom one would assume have had time to cultivate and even polish their standards of integrity) rationalizing thievery.

This pattern of rationalization corresponds with studies of how other white-

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197. *Id.* at 744. This, like the other interviews that were quoted in the article, were confidential in that I promised not to identify the lawyers or the law firms where they worked. I assigned each lawyer a fictitious name.

198. *In re Schneider*, 553 A.2d 206, 206 (1989). Schneider received an undergraduate degree and a J.D. from Harvard University, and a Ph.D. in industrial and organizational sociology from Oxford University in England before he began work at Seyfarth, Shaw, L.J. Pendlebury, *The \$800 Showdown: DC Lawyer Fights Bar Suspension*, *LEGAL TIMES*, Dec. 22, 1986, at 1.

199. *Schneider*, 553 A.2d at 206.

200. *Id.* at 212. The dissenting opinion suggested that this sanction was too harsh, and urged that a public censure would be more appropriate. *Id.* at 215. The dissenting judge was concerned by the characterization as "dishonest" of conduct that was not materially so. *Id.*

201. *Id.*

collar criminals have explained their misconduct to themselves or others. One important work is Donald Cressey's book, *Other People's Money*.<sup>202</sup> Cressey noticed that many of the embezzlers he studied occupied positions of trust and that when they began to steal money, they said that in fact they were only "borrowing it."<sup>203</sup> Stephen Box, another scholar, found that many white collar criminals use five distinct strategies to rationalize criminal actions.<sup>204</sup> Friedrichs summarizes these strategies as follows:

First, corporate officials can deny responsibility for any intentional wrongdoing . . . by claiming that the relevant laws are vague or ambiguous, that the incident was an accident, or that other parties made the key decisions. Second, they can deny injury . . . by rationalizing that their activities have actually been economically beneficial. Third, they can deny the existence of a victim . . . by claiming that no one was really harmed by their activity. Fourth, they can condemn the condemners . . . by claiming that the laws themselves are an unwarranted interference with free enterprise. And fifth, they can appeal to higher loyalties . . . by affirming that the needs of the corporation and its stockholders (or their own families) should take precedence over obedience to mere laws.<sup>205</sup>

At least three of the lawyers — Digges, Myerson, and Walsh — claimed that while the bills showed amounts due based on a multiple of hours worked times the lawyer's hourly rate, the clients understood that the lawyers used factors other than time in setting the fee. The lawyers essentially claimed that they properly inflated the number of hours worked to make the fee correspond with the value conferred on the client. Maureen Walsh went as far as to wrap herself not only in law firm policy but in the ethical rules, pointing out that Rule 1.5 explicitly authorizes lawyers to consider other factors besides the amount of time worked in setting fees.<sup>206</sup> Ed Digges claimed that there had been a gross misunderstanding;

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202. DONALD R. CRESSEY, *OTHER PEOPLE'S MONEY* (1953).

203. FRIEDRICH, *supra* note 2, at 231 (describing Donald R. Cressey's book, *Other People's Money*). Friedrichs observes that "because rationalizations, neutralizations, and accounts most typically surface after the crimes have been committed, it is not always clear to what extent they facilitated the lawbreaking in the first place, or developed later as attempts to excuse wrongdoing." *Id.*

204. *Id.*, citing STEVEN BOX, *POWER, CRIME AND MYSTIFICATION* (1983) and G. M. Sykes & D. Matza, *Techniques of Neutralization: A Theory of Delinquency*, 27 AM. SOC. REV. 664-670 (1957).

205. *Id.*

206. *Model Rule 1.5* says in part:

A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent. MODEL RULES Rule 1.5.

he never intended to bill solely on the basis of time spent but his own scheme of "ad hoc 'value billing' " instead.<sup>207</sup> Harvey Myerson claimed that his agreement with Shearson Lehman entitled his firm to bill \$800,000 per month regardless of the number of hours worked.<sup>208</sup> Myerson also claimed that other lawyers in his firm had engaged in overbilling without his knowledge.<sup>209</sup> This "standard operating procedure" defense has been used by other white collar offenders. One study of convicted violators of the antitrust laws reported that they often claimed that the conduct that led to their convictions was a common business practice or a business necessity.<sup>210</sup>

## 2. Prosecution Breeds Remorse

Several of the lawyers expressed anguish and remorse at the conclusion of the criminal proceedings. Just before sentencing, each of these lawyers had everything to gain by acknowledging wrongdoing and expressing regret. But at least in some cases the expression appears to have been quite sincere. The confrontation that occurs when billing fraud is investigated or prosecuted may be an effective antidote to self-deception through rationalization.<sup>211</sup> Gary Fairchild, for example, said at his sentencing hearing: "What I did was wrong, terribly wrong . . . I've disgraced my profession, betrayed my former law firm, irreparably harmed my family and destroyed my life."<sup>212</sup> When confronted about his fraudulent scheme, Wilkes Morgan confessed that he had done what was charged and turned over all his assets (worth approximately \$1 million) to the firm, including his home, his cars, and his plane.<sup>213</sup> Gary Fairchild repaid a substantial sum of money.<sup>214</sup>

The lawyers' comments are significant, but a more persuasive measure of their remorse is their efforts to compensate the losses they caused. In this regard there appears to be some divergence among the lawyers. Some appear to have been good people who did bad things and then tried to make it right. Others made only

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207. *St. Paul Ins. Co. v. Dresser Indus., Inc.*, 972 F.2d 341, 1992 WL 189491, at \*1 (4th Cir. 1992) (unpublished opinion).

208. Brill, *supra* note 51, at 5.

209. Jonathan M. Moses & Richard B. Schmitt, *Myerson Trial Scrutinizes Subject Close to Most Law Firms: Billing*, WALL ST. J., April 6, 1992, at B7.

210. FRIEDRICHS, *supra* note 2, at 231, citing Michael L. Benson, *Denying the Guilty Mind: Accounting for Involvement In a White-Collar Crime*, 23 CRIMINOLOGY 583-608 (1985).

211. One lawyer who worked with Wilkes Morgan described Morgan as having been so distraught [after the billing fraud was discovered] that he "contemplated suicide before coming clean with Bronson partners." Howard Mintz, *Bronson Embezzler Blames Vietnam*, RECORDER, Dec. 17, 1992, at 1.

212. Matt O'Connor, *Ex-Top Lawyer Gets 2 Years for Stealing from Firm, Clients*, CHI. TRIB., Mar. 22, 1995, at 9.

213. Mintz, *supra* note 211, at 1.

214. Goldberg, *supra* note 189, at 84.

minimal acknowledgments of wrongdoing and repaid only such sums as they were legally compelled to. Perhaps they also are good people who did bad things, but perhaps some of them have yet to rediscover their values.

## VII. PENALTIES: PROSECUTION AND DISCIPLINE

Having explored what the lawyers did and some possible explanations of the causes or motivations of the misconduct, I now turn to look at how these cases were treated by law enforcement agencies and lawyer disciplinary agencies. This exploration will show that in many of these cases, once an investigative agency became involved, the lawyers' conduct was treated as serious criminal or unethical behavior, deserving of substantial prison sentences and/or disbarment. There are several cases, however, in which there was no criminal prosecution.

### A. CRIMINAL PROSECUTION

Nine of the sixteen lawyers have been indicted on criminal charges, all by federal prosecutors. Of the nine, one was convicted after a trial (Myerson); the other eight plead guilty. Eight were sentenced to prison: 70 months for Myerson, 55 months for Fox, 33 months for Duker, 30 months for Digges, 24 months each for Morgan and Fairchild, 21 months for Hubbell, and 12 months for Walsh. Flato got six months home detention. Their criminal sentences included other sanctions as well: some were ordered to pay restitution, some to submit to probation after release from prison, some to pay fines, and a few to perform community service.<sup>215</sup>

What about the other eight? A couple of them are or may be the subject of pending criminal investigations, but some others avoided prosecution. Why? Perhaps William Appler was not charged because of the significant role played in his conduct by mental illness.<sup>216</sup> The others are more difficult to understand. Perhaps resource constraints contributed to decisions not to indict some lawyers. Prosecuting criminal cases against partners in large well-heeled law firms is a resource-intensive business. Professor Charles Wolfram observed that prosecutors are reluctant to indict lawyers in large law firms because "[y]ou're just up against so much firepower, and the firm has so much at stake in terms of reputation."<sup>217</sup>

Table 4 describes the criminal charges made against some of the lawyers and the penalties imposed after conviction or guilty plea.

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215. Sources for the information in this paragraph are identified in Table 5.

216. See *infra* Appendix E.

217. Amy Stevens & Milo Geyelin, *Chapman & Cutler's Client Billing is Said to Be Investigated By US*, WALL ST. J., Nov. 18, 1994, at B6.



TABLE 5  
CRIMINAL CHARGES AND DISPOSITION

	Name, Alleged Amt. Stolen, and # of Months of Prison Sentence	Criminal Charges and Disposition
1	Edward S. Digges, Jr. \$3.1M 30 months	Indicted November '89, charged with 6 counts of mail fraud. (Marcotte 90) Pled guilty to 1 count of mail fraud, sentenced to 30 months prison and 3 years probation, ordered to pay \$1 million in restitution to Dresser Industries and a \$30,000 fine. (Legal 90)
2	Harvey Myerson \$2.5M 70 months	Charged with 15 counts of racketeering, fraud, conspiracy, and obstruction of justice, including charges of fraudulent billing six clients over \$2.5 million, and stealing \$1 million from his former partners. (Geyelin 90) Convicted of 9 counts, those involving defrauding his clients, acquitted on charges of theft from his partners. (Moses & Lambert 92, Jensen 'final act' 92) Sentenced to 70 months in prison, 3 years supervised release, restitution. (Lubasch 92) The judge imposed the sentence recommended by the sentencing guidelines. He concluded that Myerson lacked remorse. (Moses 92) When Myerson was convicted, federal prosecutor Sean O'Shea said "The verdict itself is unprecedented in that it addresses fraud at a top-flight law firm with top-flight lawyers. . . . It means we can apply this law to lawyers no matter how powerful they are. We're talking about Harvard and Columbia trained lawyers." (Myerson Guilty) Convictions affirmed on appeal; (US v. Myerson 93) US Supreme Court denied certiorari. Myerson later was convicted of tax fraud and mail fraud for writing checks for over \$400,000 to his brother-in-law, who then returned to the money to Myerson. Also charged with mail fraud for obtaining a \$1.75 million loan by forging releases on liens against art works he owned. (Frost 92, Lubasch 92)
3	Wilkes "Skip" Morgan \$2.3M 24 months	Indicated October '92; pleaded guilty to mail fraud and tax evasion December '92. (Mintz 92) Sentenced to 2 years in prison. (Faked 92)

	Name, Alleged Amt. Stolen, and # of Months of Prison Sentence	Criminal Charges and Disposition
4	H. Lawrence Fox \$1.62M 55 months	<p>Indicated on felony charges '92; (Outfoxed 92) pleaded guilty to 2 felony counts of mail fraud and tax evasion. Sentenced in October '92 to serve 55 months in prison with no possibility of parole. After completing the prison term, Fox was to be on supervised release for 3 years. In addition, Fox was ordered to pay \$1.62 million in restitution,<sup>218</sup> and to perform 300 hours of community service after release at an organization that provides food for the homeless or some similar service. (Ex-Lawyer 92)</p> <p>At the sentencing hearing, Judge Hogan said: "The court does not enjoy sentencing an attorney to jail. At the same time, faced with the massive scheme in this case and the evident greed that generated it, it does not see in fairness to the public and society at large and to the other members in our profession, . . . any other sentence that is appropriate." (Ex-Lawyer 92)</p>
5	Maureen Walsh \$1.4M 12 months	<p>Indicated for and pled guilty to 23 counts of mail, wire and bank fraud in April 1997. Plea was fashioned as an "Alford" plea, acknowledged that government could prove the charges but did not admit guilt. (O'Connor 97) In entering her guilty plea, Walsh said "I now understand my mental capacity was diminished during this period. . . . I buckled under the pressure . . . I flunked the character test. . . . I regret my actions and the harm they caused my clients." (Stephens 97a) Sentenced to 1 year in prison.</p> <p>Commenting on the case, U.S. Attorney James Burns said that part of the blame for Walsh's conduct falls on the culture of a "prestigious silk stocking law firm" where those who aspire to make partner must make a "track record" by billing a lot of hours. (Van Duch 96)</p>

218. \$1,214,985 to Winston and Strawn; \$229,892 to Sierra Pacific Resources; \$123,255 to Kidder, Peabody & Co.; \$52,109 to Rohm & Haas Co. *Ex-Lawyer Draws 55 Months in Prison*, LEGAL TIMES, Nov. 2, 1997, at 12.

	Name, Alleged Amt. Stolen, and # of Months of Prison Sentence	Criminal Charges and Disposition
6	William F. Duker \$1.4M 33 months	Pled guilty to charges of "mail fraud, filing false claims, making false statements, and obstructing a federal audit." (Duker Pleads) In a related civil settlement, Duker and his firm agreed to pay the government \$2.9 million. Of that amount, the firm will pay \$349,000; Duker will pay the remainder. (Duker Pleads 97) Sentenced to 33 months in prison. (Weiser 97)
7	William Appler \$1.1M	Appler was not criminally prosecuted. He "apparently avoided criminal prosecution by reaching a settlement with McDermott." (Re Appler)
8	Gary Fairchild \$784T 24 months	Pled guilty to 1 count each of mail fraud and tax evasion in December '94. Indictment alleged theft of \$784,200 from his firm and his clients. Fairchild asked to begin serving time in prison immediately upon entering his guilty plea. This request was granted, time to be credited toward his sentence. (Geyelin 94) Sentenced to 2 years in prison, the minimum available under the federal sentencing guidelines. Fined \$36,000, ordered to perform 5 hours a week of community service after release. The judge graduated from Northwestern law school one year before Fairchild. He said the sentence reflected Fairchild's "contrition, remorse, and his restitution to the firm and all clients." (O'Connor 95)
9	Michael X. Morrell \$500T	None reported in the press.
10	Webster Hubbell \$482T 21 months	Charged with mail fraud for a statement of services sent to FDIC "for the purpose of executing the . . . scheme to defraud and to obtain money and property by means of false and fraudulent pretenses." (Information) Billed RTC twice for \$30,000 of work. (Isikoff 94) Charged with tax evasion for not reporting as income money improperly obtained from his firm and his clients. (Information) Pled guilty December '94. Agreed to provide information to Independent Counsel Ken Starr and to file amended tax returns for the years '89 to '92. (Plea Agreement)

	Name, Alleged Amt. Stolen, and # of Months of Prison Sentence	Criminal Charges and Disposition
		Began serving sentence of 21 months in August '95 at a minimum security prison in Cumberland, Maryland. The complex "resembles a college campus, with a softball field, pool tables, two handball courts, basketball courts and a jogging track." (Prison) Possible work assignments included landscaping, auto mechanics, warehouse work and janitorial work. (Prison 95) Hubbell kept an extensive journal while in prison and used it to write a book. (Ahrens 97)
11	James T. Crowley \$385T	Crowley's conduct did not lead to criminal charges. (McCarty 97)
12	Timothy Flato \$300-400T 6 months home detention	Pled guilty to 2 counts of mail fraud (8 other counts dismissed), April '96. (Crawford 96b) The prosecutor recommended probation with 6 months at a halfway house. The plea agreement also included a promise to pay restitution of at least \$139,000 and \$20,000 in fines. (Crawford 96a) Flato was sentenced to 6 months home detention. The prosecutor attributed the light sentence to Flato's "extraordinary acceptance of responsibility" for his conduct and his extensive cooperation with investigations by the firm and the US Attorney. (Mintz 96c)
13	Richard Salomon \$214T	None reported in the press.
14	Sherman F. Taub \$225T	None reported in the press.
15	Stanford D. Hess \$110T	In April '95 the chief of criminal investigations for the state attorney general's office reported that there had been no complaint alleging criminal activity relating to Hess' billing scheme. (James 95a)
16	Scott J. McKay Wolas	Criminal investigation of Wolas' investment scheme pending. (Meier 96)

Timothy Flato's case presents a good example of the complexity that lies behind the tidy numbers of dollars alleged to have been stolen. The charges against Flato focused only on \$139,000 of his falsified expenses, all of which involve fraudulent reimbursement for airplane tickets. Of the various misconduct that turned up in the investigation, this was deemed the most certain to be proveable.<sup>219</sup> The amount Flato was charged with stealing was an important point of negotiation because it would determine the range of penalties to which Flato would be subject.<sup>220</sup> Flato apparently admitted in court papers, however, to having stolen \$300,000 to \$400,000 through expense fraud between 1991 and 1994.<sup>221</sup> Professor Stephen Barnett of Boalt Hall School of Law commented that the public charges were confined to expense fraud, but "... Flato billed \$4 million to \$5 million a year. If he was cheating heavily on expenses, how likely is it that all those hours were legitimate?"<sup>222</sup> U.S. Attorney Michael Yamaguchi said he had asked Latham managing partner Robert Dell "about that, and they said they would take all that into consideration."<sup>223</sup> Even so, the issue of inflation of hours never really surfaced. Under the terms of Flato's guilty plea, he would repay at least \$139,000 in restitution and \$20,000 in fines. The prosecutors agreed not to oppose a sentence of probation for Flato.<sup>224</sup>

It is discomfiting to imagine a sophisticated corporate lawyer negotiating with a federal prosecutor over the amount that the lawyer will be charged with stealing, when both the lawyer and the prosecutor are fully cognizant that the actual amount stolen is much larger than the amount publicly alleged. After Flato was sentenced to home detention, Robert Dell, the managing partner of Latham & Watkins, said the firm had not intended that the prosecution would result in Flato's incarceration. "We had no intention of seeing Tim put away. That was not our goal."<sup>225</sup> Was the firm in a position to direct the outcome of the plea negotiations?

The records of the criminal and disciplinary cases against these lawyers do not tell the whole story. They tell the part of the story that came to light. Many of the

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219. Howard Mintz, *Ex-Latham Partner Could Skip Jail Under a Plea Deal; Rainmaker Accused of Fraud Would Have to Repay Firm*, RECORDER, Apr. 16, 1996, at 1 ("Flato has been suspected of skimming as much as \$300,000 to \$400,000 from the firm, but it appears the airline tickets became the most irrefutable evidence assembled by the firm and the U.S. Attorney's Office.").

220. *Id.*

221. Howard Mintz, *The Meltdown of Timothy Flato*, THE RECORDER, July 24, 1996, at 1.

222. Stephen R. Barnett, *If Lawyers Cheat on Expenses, Why Not Billable Hours Too?*, Letters to the Editor, RECORDER, Jan. 23, 1995, at 5.

223. Barbara Steuart, *Yamaguchi Keeps a Watchful Eye on Flato Investigation*, RECORDER, Jan. 30, 1995, at 1.

224. Krysten Crawford, *Former Partner at Latham & Watkins Makes Guilty Plea*, RECORDER, Apr. 29, 1996, at 1.

225. Mintz, *supra* note 221, at 1.

actors in these dramas, including the lawyers themselves, their firms, and their clients, have powerful incentives to minimize the amount of information that emerges. Even so, the stories are dramatic and, in some cases, almost unbelievable. Imagine what the numbers and the facts of these stories might look like if the whole picture was disclosed.

One reason Flato's timekeeping practices never became an issue is that the two clients who had been the target of Flato's expense fraud were reimbursed and continued to be represented by the firm.<sup>226</sup> One client representative, Deutsche Bank director Robert Simmons, wrote a letter on Flato's behalf during the criminal proceeding, saying "[I]t is interesting to note that despite the disclosure of overbilling, the legal fees charged ultimately to the client [by Flato] were always reasonable relative to the charges of other legal counsel also involved in the various transactions."<sup>227</sup> If the client is happy, did the lawyer do anything wrong? Perhaps if the client is an individual spending his own money to pay the lawyer, client concurrence in the billing practices after full disclosure would at least suggest that no harm was done to the client. Even in the absence of economic harm to the client, however, one might argue that any deceptive billing practice by a lawyer is "wrong" simply because it is dishonest. A crime may be punished without proof of damage to an individual; the purpose of law enforcement is to implement the state's interest in punishing and deterring fraudulent behavior. Deceptive or dishonest billing behavior may be harmful even if a particular client is not aggrieved. Lawyers who rationalize billing and expense fraud in one matter may repeat the misconduct in other cases. Lawyers who engage in deceptive behavior may experience an erosion of their sense of integrity.

But suppose, as in this case, the "client" is a bank? Or a corporation? And the client representative is informed that the lawyer has been getting reimbursed for plane trips not taken, and says "no problem"? The client representative may not be concerned about the excess expenses because they don't cost him anything. Further, he may have a close relationship with the lawyer and honestly believe that the lawyer deserves a bonus for his excellent work. But perhaps the client representative in this hypothetical scenario is violating his duty to the client entity to avoid excess expenses, to conserve resources, and to make truthful records of expenditures so that others in the organization may review them. The absence of an angry client may reduce the likelihood of prosecution or discipline, but still the conduct may involve serious wrongdoing.

The duration of the prison sentences was determined in some part by the amounts of theft that were charged, but, as explained above, in some cases the

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226. *Id.*

227. *Id.*

amount that was to be charged was subject to negotiation during plea bargaining. In many cases, the compromises made by the prosecutors during plea bargaining are evident. Many counts were dismissed; some of the lawyers pled guilty to only one or two counts of a longer indictment. The single exception is Maureen Walsh, who pled guilty to all twenty-three counts in her indictment. In sentencing, the judges took account of various other factors besides the amount of theft charged, including evidence of remorse, restitution, and cooperation with investigators. Maureen Walsh, who received the shortest of the prison sentences, was found to have suffered from diminished mental capacity because of the medications she was taking.<sup>228</sup>

Query whether this collective picture represents a group of privileged people who evaded or minimized adverse consequences for their misconduct, or whether the law is being enforced against them as it might be against others. Case studies cannot provide a definitive answer to this question, but in this limited picture one sees some vigorous law enforcement and some who apparently got away.

Most researchers who study white-collar crime posit that the odds of getting caught are quite low. James William Coleman writes that "the idea that white-collar offenders commit their crimes because they are unlikely to be punished has been repeated so often that it has become something of a sociological truism. . . . Most [scholars] have simply chalked it up to the vast economic and political power of the corporations and left it at that."<sup>229</sup> Perhaps these sixteen lawyers' education, wealth, connections and reputations led them to suffer less onerous consequences as a result of their crimes than they might have in the absence of some of those advantages. William Duker, for example, was charged with stealing only \$1.4 million, but agreed in a civil settlement to repay the government \$2.58 million.<sup>230</sup> If Duker had been criminally charged with theft of the higher amount, the sentencing guidelines would have required the judge to impose a longer prison sentence than he will receive for the lower amount. One can identify some factors that may have affected prosecutors' attitudes toward the plea negotiations in these cases. Each defendant and prosecutor share the same profession. Some prosecutors and defendants probably had other things in common professionally or socially. This type of affinity might lead to greater compassion or leniency than might be shown toward another defendant. Alternatively, it might evoke a higher than normal degree of moral outrage because the prosecutor is evaluating the conduct of a fellow professional. Regardless of whether economic privilege led to leniency, these sixteen cases show that some lawyers in positions of enormous power and influence are being caught and punished for misconduct that not very long ago was simply absent from criminal

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228. *United States v. Fairchild*, No. 96-CR-718-1 (N.D. Ill. 1997).

229. Coleman, *supra* note 146, at 62.

230. Walsh, *supra* note 122, at G3.

law enforcement. These cases suggest that lawyer billing fraud has been “criminalized” during the last ten years.

Why? Is there more billing fraud today than there was ten years ago? I suspect that there may be less billing fraud now than there was in the late 1980s. A high water mark for lawyer billing fraud may have been set in the late 1980s. Partly in response to the “feeding frenzy”<sup>231</sup> of the late 80s, now there are many more formal and informal regulatory mechanisms in place. Corporate clients have published billing policies for outside counsel; they routinely employ auditors to identify excessive charges.<sup>232</sup> More law firms now have explicit billing policies, ethics committees, ethics training, and more extensive systems for review and monitoring of billing practices.<sup>233</sup> This scrutiny may have deterred some billing fraud. The increased formal and informal monitoring also reflects a change in attitudes toward lawyer billing practices, and has precipitated some of the investigation that led to the criminal charges against some of these lawyers.

#### B. LAWYER DISCIPLINE

All of the sixteen lawyers became the subject of disciplinary investigations. A table showing what rules were alleged to have been violated by each appears as Appendix G. Surprisingly, very few of the lawyers have been charged with violation of Rule 1.5, charging an unreasonable fee, or the equivalent rule in the jurisdiction. The most common of the alleged violations is 8.4(c): “dishonesty, fraud, deceit or misrepresentation”. Dishonest billing appears not to be regarded as a *per se* violation of Rule 1.5. Perhaps this is because Rule 1.5 does not describe — even in general terms — the prohibited conduct.<sup>234</sup> The language of Rule 8.4c is of course broad enough to cover billing fraud (as well as any other dishonesty), but the language of the rule is too general to give notice to

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231. See Lerman, *Lying to Clients*, *supra* note 97, at 714 (including comment by “Winston Hall,” former associate in a large law firm).

232. Smith, *supra* note 67 and accompanying text.

233. Epstein, *supra* note 72 and accompanying text. A few firms have gone so far as to implement a computer program that “sweeps time entries from individual lawyers into a central file every 24 hours, sums up a lawyer’s daily fees and costs, and transmits the information electronically to clients’ computers.” Amy Stevens, *Clients Second-Guess Legal Fees On-Line*, WALL ST. J., Jan. 6, 1995 at B1.

234. See Lerman, *Lying to Clients*, *supra* note 97, at 750–53 (proposing changes in *Model Rule* 1.5 to set consistent standards for hourly billing practices.) These proposed changes were of course not intended as a complete solution to the problem, but only to suggest that people are in a better position to follow consistent practices if they have guidelines. My proposal, which was intended to stimulate discussion, may have been more specific in its mandate that is feasible or even appropriate. Nevertheless, I continue to believe that one step in the prevention or deterrence of billing fraud would be to draft a rule on fees which would identify proper and improper practices. Such a rule would put lawyers on notice of what was required or prohibited. Some lawyers object that a specific rule on billing and expense fraud is not needed, that it would only state the obvious. My experience leading discussions of lawyers at CLE programs and law students in Professional Responsibility classes suggests that we are far from consensus on what billing practices are ethical.



practitioners as to what types of dishonesty may result in discipline. Since some rules explicitly permit some deception,<sup>235</sup> a lawyer cannot read rule 8.4 simply to prohibit all dishonesty.

Unlike many other white collar offenders, for many of these lawyers, the discovery of their misconduct led to the termination of their professional careers. To date, thirteen either resigned from bar membership or were disbarred. At least six of those sought voluntary disbarment (Fox, Fairchild, Hubbell, Flato, Salomon, and Taub). Crowley and Wolas were indefinitely suspended. Hess was suspended for three years. The disciplinary action against Walsh is still pending, but a divided panel recommended disbarment.<sup>236</sup> These sanctions are consistent with those imposed in many other overbilling cases. Where a lawyer represents having worked more hours than were actually worked for the purpose of increasing the fee charged to the client, disbarment is a common outcome.<sup>237</sup>

TABLE 6  
DISCIPLINARY DISPOSITIONS

	Name & Alleged Amt. Stolen	Disciplinary Dispositions
1	Edward S. Digges, Jr. \$3.1M	Disbarred, Maryland, 1990, disbarred, US Sup. Ct., 1990. (Re Digges)
2	Harvey Myerson \$2.5M	Disbarred, New York, 1998. (Discipline)
3	Wilkes "Skip" Morgan \$2.3M	Disbarred by consent, California, 1992. (Re Morgan)

235. Rule 4.1(a), for example, prohibits a lawyer from making a false statement of fact or law to a third person, but the comments specify that some false statements are not to be regarded as statements of material fact and therefore are not prohibited by the rule. Rule 4.1(b) permits a lawyer to withhold information from a third person even when the disclosure would avoid assisting a criminal or fraudulent act by a client, if the information is protected by Rule 1.6. ABA, Model Rules of Professional Conduct (1998).

236. Patricia Manson, *Split Disciplinary Panel Urges Ex-Partner Fairchild's Disbarment*, CHI. DAILY L. BULL., April 28, 1999, at 3.

237. See, e.g., Cuyahoga County Bar Ass'n v. Okoch, 697 N.E. 2d 594, 597 (Ohio 1998) ("[O]btaining fees by padding client bills with hours not worked . . . is equivalent to misappropriation of the funds of the client and warrants disbarment."); Toledo Bar Ass'n v. Batt, 677 N.E. 2d 349 (Ohio 1997) (same); *In re Miller*, 735 P. 2d 591 (Or. 1987) (stating disbarment appropriate where attorney regularly added five to 15 hours to client's billing statements); *In re Jennings*, 468 S.E.2d 869 (S.C. 1996) (concluding attorney disbarred for repeated doubling of associates time without justification). These cases were cited by the Maryland Court of Appeals in its opinion suspending Stanford D. Hess for three years. Attorney Grievance Comm'n v. Hess, Misc. Docket AG No 55 (Md. Ct. App., Jan. 14, 1999)

	Name & Alleged Amt. Stolen	Disciplinary Dispositions
4	H. Lawrence Fox \$1.62M	Disbarred, US Supreme Court, 1992; disbarred VA, 1992, DC, 1993. (Re Fox 93)
5	Maureen Walsh \$1.48M	Interim suspension ordered 1997, Illinois. (Manson)
6	William F. Duker \$1.4M	Disbarred, New York, 1997. (Re Duker 97); disbarred, DC, 1999 (Re Duker 99)
7	William Appler \$1.1M	Disbarred, DC, 1995. Petition for rehearing denied. (Re Appler, Re Appler 2)
8	Gary Fairchild \$784T	Disbarred by consent, Illinois, 1994. (Rooney 94)
9	Michael X. Morrell \$500T	Disbarred, DC, 1996.
10	Webster Hubbell \$482T	Disbarred by consent, Arkansas, 1995. (Re Hubbell)
11	James T. Crowley \$385T	Indefinitely suspended, Ohio, 1994. (Re Crowley) <sup>238</sup>
12	Timothy Flato \$300-400T	Disbarred by consent, California, 1996. (Montz 96a, Slind-Flor 97)
13	Richard Salomon \$254T	Disbarred by consent, Illinois, 1994. (Re Salomon)
14	Sherman F. Taub \$225T	Disbarred by consent, New York, 1996. (Re Taub 96)
15	Stanford D. Hess \$110T	Disbarred, US Supreme Court 1999; (Re Hess); Suspended for three years, Maryland, 1999. (Opinion 99)
16	Scott J. McKay Wolas	Suspended until conclusion of disciplinary proceeding, New York 1997. (Re Wolas)

238. The court noted "the calculated, deliberate manner in which Respondent conducted and concealed his fraudulent schemes," and found that he had committed a "gross abuse of a position of trust and responsibility for personal gain . . . [and had] demonstrated a fundamental lack of appreciation for lawyers' ethical obligations to the profession and the public." (Re Crowley)

## VIII. LAW FIRM RESPONSIBILITY FOR BILLING AND EXPENSE FRAUD

We have considered the individuals in the sixteen cases and the responses of the criminal justice system and the disciplinary system. Now we turn to examine the law firms where these lawyers worked. How was the billing fraud uncovered and by whom? How did the firms respond to allegations of billing or expense fraud? Did they report the lawyers to the bar? To a prosecutor? Did they conduct internal investigations? At the time the misconduct occurred, did each firm have in place an ethics counsel or committee, an internal procedure to audit billing practices, or some other system to prevent and detect billing and expense fraud? Some of the variation in firm responses and systems reflects absence of institutional consensus about whether the conduct alleged was criminal or unethical and about whether the firm should handle the matter internally or report it to the authorities.

## A. HOW THE BILLING FRAUD WAS UNCOVERED

The detection of white collar crime depends on the interest and the courage of informers and whistleblowers.<sup>239</sup> People report misconduct by others for various reasons. One group, who have been called "ethical resisters," report misconduct out of felt moral obligation.<sup>240</sup> This obligation may arise from personal beliefs or principles or from a felt need to comply with a legal obligation. A lawyer might be obliged to report unethical behavior or a service provider to report child abuse. Another group may report misconduct for "blatantly self-interested or instrumental reasons."<sup>241</sup> One person in a firm might report misconduct by another as retaliation for poor treatment, to gain competitive advantage, or because of personal animosity. In evaluating the reporting stories below, it is possible to identify all of these dynamics at work.

Many interesting questions arise in connection with the discovery and reporting of these lawyers' billing fraud. One is who first raised questions? Among the lawyers listed above, the most common whistleblowers were other lawyers in their firms. The press reported that Flato, Hess, Myerson, Salomon, Walsh, and Wolas were the object of inquiries by other lawyers within their firms.<sup>242</sup> Some of the lawyer-whistleblowers were associates who worked for the partners who were investigated. Digges and Appler were investigated based on concerns raised by secretaries. Morgan's investigation was triggered by a report from the firm's accounting office. Hubbell appears from the available information to be the only one whose investigation was triggered partly by a client inquiry. Only Timothy Flato was reportedly caught by a partner reviewing an expense report.<sup>243</sup>

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239. FRIEDRICHS, *supra* note 2, at 22-23.

240. *Id.* at 24, citing M.P. GLAZER & P.M. GLAZER, *THE WHISTLEBLOWERS* (1989).

241. *Id.*

242. Much of the information presented in this article is drawn from published reports. It is possible that in some cases the firm made an incomplete or an inaccurate report of how the lawyer's billing fraud was discovered.

243. Sources for the information in this paragraph are identified in Appendix H.

This composite picture raises as many questions as it answers, but a few observations can be made. One is that the accountants, auditors, and firm management are, with the exceptions of Flato and Morgan, largely absent from the whistleblowers' club. Perhaps they were genuinely unaware of what in many cases consisted of multi-year patterns of billing and expense fraud. If so, one might conclude that the monitoring systems in the law firms were utterly inadequate. With the benefit of hindsight it is apparent that many of these people were engaged in patterns that could have been noticed and stopped much earlier. You don't have to be Sherlock Holmes to know that a purchase at Cartier's or Victoria's Secret might not be a legitimate business expense.

The least sinister of the possible explanations of institutional failure is institutional ineptitude. But none of these firms was in other respects inept. Perhaps the billing and expense fraud was known to other lawyers and not investigated. Why? At some of the firms other lawyers may have been engaged in similar practices. In some cases the lawyers in question were powerful enough within their firms that no one wanted to challenge them. Perhaps some associates were reluctant to question the conduct of partners for whom they worked.<sup>244</sup> Economic self-interest may have constrained some from intervention.

One might expect that complaints about lawyer billing practices would be initiated by overbilled clients.<sup>245</sup> In some states, more than twenty-five percent of all client complaints of lawyer misconduct allege misconduct relating to fees.<sup>246</sup> The clients are almost entirely absent, however, from the initial discovery of these cases of billing and expense fraud. Why? One reason is that billing and expense fraud is extremely difficult to detect. If a lawyer simply pads his timesheets, who can tell? How could an auditor tell that four hours was really two, or that a dinner at an elegant restaurant was with a date rather than with a client? Even legal auditors cannot detect most of these deceptions.<sup>247</sup>

One reason that the clients in these cases are not the principal complainers is that they may not have known that they were being bilked. Some of them were apparently pleased with the legal services that they were receiving, and were not

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244. In other research I have interviewed many law firm associates who were critical of what they regarded as unethical billing practices by some of the partners they worked for, but who did not raise questions within the firm. One lawyer, whom I called Chris Warden, explained that "you couldn't run and tell the management of the firm . . . because *they* were the ones doing it." Lerman, *Gross Profits*, *supra* note 97, at 646.

245. Professor William G. Ross reported a study in which he asked eighty in-house lawyers if they believed that their outside counsel deliberately padded their bills. Stevens, *supra* note 64, at B9. 15.2% of the lawyers answered "frequently," 40.0% answered "occasionally," 35.6% answered "rarely." *Id.* Only 8.5% responded "never." *Id.*

246. See, e.g., Eric H. Steele & Raymond T. Nimmer, *Lawyers, Clients, and Professional Regulation*, 1976 AM. B. FOUND. RES. J. 917, 976 (1976) (listing categories of complaints received by a Michigan disciplinary agency from clients, professionals, and others).

247. One law firm managing partner commented: "While some audit firms actually do uncover instances where there has been outright fraud and totally unnecessary time spent, by far the most common 'audits' are ones in which the 'auditor' has no idea what the case is about, who's working on it, why they're doing what they're doing, and who's authorized them to do so." *Counting the Coinage*, CONN. L. TRIB., Jul. 15, 1996, at 23.

concerned about how the bills were calculated.<sup>248</sup> Many of these were large corporate clients, accustomed to paying large legal bills to multiple firms every month. The corporate representatives who reviewed the bills were not personally responsible for the payments, and may have been less careful about reviewing the bills than they would have been if they were spending their own money.<sup>249</sup>

Another interesting aspect of the whistleblowing chapter of these stories is why and how each of these lawyers became the subject of scrutiny. Some lawyers appear to have earned the deep and enduring animosity of their partners. If you really detest one of your partners, and you happen to learn that he is writing fictitious timesheets, you might be more inclined to initiate an investigation than if your closest colleague is doing the same thing.

Some partners of the lawyers whose cases are examined here had ethical questions about the conduct of the partner later caught overbilling before the billing fraud was discovered. For example, some lawyers at Mayer, Brown & Platt questioned whether Richard Salomon really graduated *magna cum laude* from Harvard Law School long before concerns arose about his financial misconduct.<sup>250</sup>

In some cases interpersonal disputes appear to have led to investigation of billing practices. Maureen Walsh, for example, was reportedly upset by the way she was treated by James Spiotto, the managing partner of her firm.<sup>251</sup> There were unconfirmed allegations that she was the source of the leakage of information about Spiotto's astronomical annual billings.<sup>252</sup> The investigation of Maureen Walsh's billings, in turn, may have been a response to her conduct toward Spiotto or other lawyers in the firm.<sup>253</sup>

One could almost chart a history of attitudes toward billing fraud in large law firms by looking at the emergence of information about Harvey Myerson's billing practices over the years and the firms' responses to them. The first public report of Myerson's overbilling related to a problem found by a comptroller at Webster & Sheffield in 1979.<sup>254</sup> The resulting investigation concluded that Myerson had committed \$120,000 worth of expense fraud.<sup>255</sup> The firm did not make a report to the disciplinary authorities or to the US Attorney. The firm did not terminate Myerson's employment. Instead, the managing partner had what was character-

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248. For example, in mitigation of the disciplinary charges against him, Taub stated not only that "all of his clients have actively declared their support" for him, but also that "virtually every one of [his] clients has approved and ratified the [inappropriate expenses] and waived their right to be reimbursed." See *In re Taub*, Before the Departmental Disciplinary Committee of the Appellate Division of the Supreme Court of New York, First Judicial Department, Docket No. HP 34/95, Answer to Charges, Sept. 15, 1995.

249. See Duncan A. MacDonald, *Gross Profits: A Client's Perspective*, 22 HOFSTRA L. REV. 655, 656 (1994) (noting that lawyers and clients who do not "manag[e] their relationship to get the most value for the expense" are guilty of "gross mismanagement").

250. Sherrie F. Nachman, *Mayer, Brown Partner Exiled*, AM. LAW., May 1994, at 26.

251. Dillon, *supra* note 52.

252. *Id.* James Spiotto reportedly billed 6,022 hours one year, and well over 5,00 during some other years. *Id.*

253. Jeffrey Bernfeld, *Devotion to Client Welfare*, AM. LAW., July-Aug. 1994, at 61.

254. Rita Healey Jensen, *Final Act Plays Out for 'The Harv'*, NAT'L L.J., Nov. 30, 1992 at 8.

255. *Id.*

ized as a "Dutch-uncle" conversation with Myerson.<sup>256</sup> Apparently \$120,000 of expense fraud was not regarded in 1979 by other lawyers at Webster & Sheffield as anything to get too excited about. Not a crime, not a basis for disbarment, not even a reason to fire a lawyer.

In 1983, one of Myerson's clients complained of large-scale overbilling. Myerson persuaded the firm that the client was trying to avoid payment of a legitimate bill. The firm wrote off \$1 million in billings.<sup>257</sup> Myerson's partners either believed his story or were not concerned enough about the client's complaint to investigate. When Myerson went to Finley Kumble in 1984, the managing partner knew that Myerson was financially overextended, but Myerson was made a partner anyway.<sup>258</sup>

In Myerson's case there were many warnings, but nothing was done. In 1989, two former associates turned over some disturbing information to Shearson Lehman, one of Myerson's clients.<sup>259</sup> Perhaps those associates felt ethically obliged to avoid further harm to a former client. Perhaps they were angry about things that happened while they worked at the firm. Perhaps the slow escalation of concerns about Myerson's financial shenanigans reflects a shift in professional attitudes to regard cavalier behavior about billing and expenses as misconduct. And perhaps the prosecution of Harvey Myerson legitimated the concerns of lawyers in other firms who were aware of other lawyers engaged in billing and expense fraud.

#### B. INVESTIGATION AND REPORTING BY THE LAW FIRMS

In most jurisdictions, Rule 8.3 or its equivalent requires that "A lawyer having knowledge that another lawyer has committed a violation of the rules of professional conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects *shall* inform the appropriate authorities."<sup>260</sup> (emphasis added) The responses of the law firms to discovery

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256. *Id.*

257. *Id.*

258. Brill, *supra* note 51.

259. *Id.*

260. ABA MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.3 (1999). Rule 8.3c says that Rule 8.3 "does not require disclosure of information otherwise protected by Rule 1.6. . ." Most jurisdictions have a mandatory reporting rule similar or identical to Model Rule 8.3. *See* STEPHEN GILLERS & ROY D. SIMON, JR., REGULATION OF LAWYERS: STATUTES AND STANDARDS 408-10 (1999) The predecessor to the ABA Model Rules was the ABA Model Code of Professional Responsibility, which was adopted in nearly every state. The Model Code included an even stricter requirement to report misconduct. (It required reporting of known violations regardless of their seriousness). The *Model Code* DR 1-103(a) provided that "a lawyer possessing unprivileged knowledge of a violation of [rules governing moral turpitude, dishonesty, fraud, deceit, misrepresentation] shall report such knowledge" to the appropriate authorities. ABA MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 1-103(a). In California, where Wilkes Morgan and Timothy Flato practiced, there is no equivalent of Rule 8.3. *See* STEPHEN GILLERS & ROY D. SIMON, JR., REGULATION OF LAWYERS: STATUTES AND STANDARDS 408 (1999) In the District of Columbia (where H. Lawrence Fox, Michael X. Morrell, and William D. Appler practiced), there was no obligation to report misconduct by other lawyers except if the lawyer was asked for such information by "an investigating authority." DC Bar Ethics Committee Opinion No. 130, September 20, 1983; DC Rules of Professional Conduct, Rule 8.3 (adopted 1991). But the jurisdictions in which the other eleven lawyers

of billing and expense fraud by these lawyers offers one snapshot of the operation of the reporting rules.

Rule 8.3 is perhaps the most widely violated and the most underenforced of the disciplinary rules.<sup>261</sup> The composite story of these sixteen lawyers reflects variability in compliance with Rule 8.3. Among these cases, at least seven of the firms reported the allegations of billing and expense fraud to disciplinary authorities and/or to prosecutors.<sup>262</sup> At least two other lawyers, Appler and Fairchild, turned themselves in to the disciplinary agencies after they had been informed that their firms had decided to report them.<sup>263</sup>

Some of the firms did not report the misconduct or delayed reporting for a year or two. Harvey Myerson was the subject of an anonymous report to the New York bar.<sup>264</sup> Michael Morrell was reported to the DC bar by Akin, Gump, but not until twenty-three months after the misconduct had been discovered.<sup>265</sup> This was explained as the product of the firm's desire to learn all the facts.<sup>266</sup> Scott Wolas' alleged overbilling was not investigated by Hunton & Williams until a year and a half after the first of three associates had raised questions about Wolas' billing practices.<sup>267</sup> The firm then conducted an internal investigation and concluded that it could not be proven "beyond a reasonable doubt" that Wolas had engaged in overbilling. At that time, the firm did not report any misconduct by Wolas to the bar.<sup>268</sup>

Partners of Stanford Hess at Weinberg & Green met several times after learning of Hess' computer program that inflated his bills by fifteen percent to decide how the firm should respond.<sup>269</sup> The partners differed about whether this

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practiced, Arkansas, Illinois, Maryland, New York, and Ohio have had mandatory reporting obligations in effect under the ethical rules that govern lawyers during the periods in which these lawyers engaged in billing and expense fraud. See generally Michael J. Burwick, *You Dirty Rat!! Model Rule 8.3 and Mandatory Reporting of Attorney Misconduct*, 8 GEO. J. LEGAL ETHICS 137 (1994).

261. In 1985, I conducted a continuing legal education program for the West Virginia Bar in collaboration with the state Bar Counsel. One focus of our joint presentation was West Virginia's "tattle-tale" rule. The Bar Counsel contended that this rule should be treated with the same seriousness as any other rule. I set out to prove to him that his aspiration was far from reality. I asked him to turn his back (to protect him from knowledge of reportable violations) and asked the assembled audience of about 100 lawyers to raise their hands if they had seen disciplinary violations that met the standard in the rule and had not reported them to the disciplinary authorities. Almost to a person, the lawyers in the audience raised their hands. Many acknowledged having observed and not reported numerous instances of serious misconduct.

262. The seven identified lawyers whose misconduct was reported by their firms to the disciplinary authorities and/or to prosecutors are Crowley, Flato, Fox, Hubbell, Morrell, Salomon and Taub. Sources for this information are identified at Appendix "I".

263. Sources for this information are identified at Appendix "I".

264. *Id.*

265. Sandra Torry, *Lawyer's Career Sinks Under Allegations; D.C. Bar Panel Finds Client Was Cheated, Firm Was Deceived*, WASH. POST, Au.g 5, 1995, at A1.

266. *Id.*

267. Ann Davis, *Firm's Handling of Allegations of Overbilling Brought Out in Suit*, WALL ST. J., June 16, 1997, at B6.

268. *Id.*

269. Marcia Myers, *Trial in Law Firm Overbilling Case Ends*, BALTIMORE SUN, July 12, 1995, at B3. Marcia

conduct was criminal, unethical, or no problem.<sup>270</sup> These discussions eventually led to a decision to tell the client about part of the overbilling.<sup>271</sup> Some allegations of billing fraud may not be reported because there is some uncertainty even in reputable firms about what are the rules on billing practices and whether certain questionable activities do or do not “raise a substantial question as to the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects.”<sup>272</sup>

These stories may reflect a rate of compliance with Rule 8.3 that far exceeds the norm. A firm might be more likely to report to the bar misconduct that was likely to become public and had the potential to harm the firm’s reputation or result in liability.

Four of the lawyers who were reported to the bar worked for law firms in or based in Chicago. All of these reports occurred after the decision of the Illinois Supreme Court in the *Himmel* case.<sup>273</sup> Himmel was the first American lawyer to be disciplined exclusively for failure to report misconduct by another lawyer.<sup>274</sup> In the wake of the *Himmel* decision, reports by lawyers of disciplinary violations by other lawyers rose astronomically in Illinois, first to an annual peak of 922 in 1989, and then dropping to 602 reports in 1996, still an unusually high level of reporting compared to other jurisdictions.<sup>275</sup> The high rate of compliance with Rule 8.3, in Illinois, then may be another reason for the high rate of reporting of these cases. Illinois may be leading the nation in the discipline and prosecution of billing fraud by powerful lawyers because of a ripple effect from the *Himmel*

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Myers reported that the partners met eighteen times to discuss Hess’ overbilling, Deborah Shortridge, ethics counsel at Weinberg & Green, reports that the actual number of discussions was much smaller, and that some of the eighteen meetings in firm records that show discussion of “Fairfax”, Hess’ client, focussed on matters unrelated to the billing problem. Telephone interview with Deborah Shortridge, Esq., June 10, 1999.

270. James, *supra* note 24, at A1.

271. Myers, *supra* note 269, at B3.

272. MODEL RULES Rule 8.3 (1997).

273. *In re Himmel*, 533 N.E.2d 790 (Ill. 1988).

274. See Ronald Rotunda, *The Lawyer’s Duty to Report Another Lawyer’s Unethical Violations in the Wake of Himmel*, 1988 U. ILL. L. REV. 977, 982 (1988). *Himmel* involved a woman named Tammy Forsberg who was injured in a motorcycle accident. Forsberg retained attorney John R. Casey to represent her in a personal injury lawsuit against the driver of the motorcycle under a one third contingency fee agreement. Casey settled with the defendant for \$35,000.00, but failed to remit the \$23,233.34 due to Forsberg. After several unsuccessful attempts to collect her share of the settlement money from Casey, Forsberg hired attorney James H. Himmel to collect it for her. Forsberg agreed to pay Himmel one third of any funds recovered in excess of \$23,233.34. Forsberg told Himmel that she only wanted to collect her money from Casey and had no interest in reporting Casey to the disciplinary or other authorities. Casey agreed to pay Forsberg \$75,000 in exchange for Forsberg’s agreement not to pursue a civil, criminal or attorney discipline action against Casey. Casey paid \$15,400 of the settlement, but failed to pay the remainder. Because of the default, Himmel obtained a civil judgment against Casey for \$100,000. Casey never paid the judgment. Himmel received no legal fees because the amount collected was less than \$23,233. Casey was disbarred by consent as a result of this incident. Himmel was charged with unethical conduct for failure to report Casey’s conduct. He was suspended for one year. See *Himmel*, 533 N.E.2d at 793–96.

275. Laura Gatland, *The Himmel Effect*, A.B.A. J., Apr. 1997, at 24 (chart entitled “Complaint Department”).



case.<sup>276</sup> This suggests that better implementation of the reporting rules may be an effective tool in efforts to deter and punish billing fraud.

### C. REACTIONS OF PARTNERS AND OTHERS

One of the mysteries of these long-term large scale thefts is how the partners of the lawyers engaged in billing fraud could *not* have noticed what was going on. Perhaps they did notice but did not object because the partners got substantial financial benefit from these "loose" and "messy" billing practices. In Harvey Myerson's case, the jury found Myerson guilty of stealing \$2.5 million from his clients, but acquitted him of stealing \$1 million from his partners.<sup>277</sup> Why? Perhaps they thought Myerson's partners really knew what was going on. Lenora Small, one Myerson juror, said of Myerson's partners: "All of them were sharing in the good times and they didn't complain. The chauffeur's salary was right there [on the monthly financial reports] in his Expense Reimbursement Limit. We thought they had an obligation to ask questions."<sup>278</sup> Gregory Lambert, the foreman, said of Myerson's partners: "None of them gave a s—t as long as they were getting their money."<sup>279</sup>

A review of the public statements made by the lawyers' partners, and in a few cases by clients, indicates that some were genuinely shocked to discover what was going on, while others seemed to have known about the misconduct for a long time. The firms' official reaction to charges generally conceals the possibility that anyone else in the firm had the slightest glimmer about the billing fraud. The institutional voice claims high moral ground and denounces the discovered corrupt behavior as aberrational. This type of organizational self-protection can be seen even in the comments of some of the lawyers' clients; one example is the Harris Bank, which issued a statement after Maureen Walsh's years of overbilling were made public that "we are convinced it was an isolated incident."<sup>280</sup>

### D. WAS THERE ANY INSTITUTIONAL MONITORING OF BILLING PRACTICES?

One obvious lesson from these stories is that many firms need better systems to monitor the billing practices of the lawyers in the firm, even, and perhaps especially, the most senior lawyers. After Ed Digges' partners were held jointly and severally liable for his billing fraud, and the firm's malpractice insurer was

276. See Darryl Van Duch, *Best Snitches: Illinois Lawyers*, NAT'L L. J., Jan. 27, 1997, at A1 (noting that the number of cases of Illinois lawyers reporting misconduct by other lawyers after Himmel is a "benchmark no other state even approaches").

277. Rita Healy Jensen, *Myerson Jurors Deliver Message; Never Trust an 'A' Student*, NAT'L L.J., May 11, 1992, at 3.

278. *Id.*

279. *Id.*

280. Amy Stevens, *Ex-Partner at Large Chicago Firm Accused of Overbilling \$1.3 Million*, WALL ST. J., Oct. 14, 1994, at B3.

found not obliged to cover the \$3.6 million judgment (\$3.1 million plus interest), a vice president at St. Paul, the malpractice insurer, advised law firms to conduct monthly reviews of all time sheets, and to make sure that the partners have access to the billing records of all the lawyers in their firms.<sup>281</sup> Professor Stephen Gillers of New York University noted that the consequences of failing to discover billing fraud can be dire. He said:

At least one court has used the failure to supervise (even a partner) as a basis for vicarious liability [citing *Dresser*]. . . . But . . . agency law will make the firm liable even if it had no reason to know of the default so long as the lawyer acted within the scope of the partnership. Overbilling and stealing client money will be within the scope because billing and maintaining escrow accounts that hold client money are things law firms do.<sup>282</sup>

The Digges case illustrates that partners of a high-billing rainmaker may have powerful financial incentives to turn a blind eye to improper billing practices. "Nobody wants to kill a rainmaker," said Professor Roy Simon of Hofstra Law School, commenting on the failure of partners at Hunton & Williams to intervene in the improper activities of partner Scott Wolas. Even partners at firms known for integrity may "worship the golden goose," said Simon.<sup>283</sup>

Sociologist Stanton Wheeler suggests that institutional culture is an important contributing factor in the occurrence of white-collar crime. Wheeler asks, in the context of the brokerage industry, what might happen where a firm that had established a climate of risk aversion "hired a few greed seekers . . . ? Might they not shift the climate in the firm from one of risk aversion to risk seeking?"<sup>284</sup> When corporate employees experience conflict between their own personal values and those of their institutional employers, the institutional values tend to have a dominant impact on the employees' behavior. Of this phenomenon, sociologist Sally Simpson writes:

[I]n situations where individual morality and business concerns clash, the former typically is relegated to the nonbusiness (and therefore irrelevant) sphere. Similarly, in the corporate world . . . there is little room for personally held convictions and principles. Instead, morality is situational, always in flux, changing along with social relations and networks within the organization.<sup>285</sup>

281. Adrienne C. Locke, *Ruling to Force Law Firms to Watch for Misconduct*, BUS. INS., July 15, 1991, at 2.

282. *On Discipline, Troubled Lawyers, and the ADA*, LEGAL TIMES, Jan. 17, 1994, at 12, citing *Dresser Indus. v. Digges*, 1989 WL 139234 (D. Md. 1989); *Roach v. Mead*, 722 P.2d 1229 (Or. 1986); and *New York v. Grandeau*, 526 N.E.2d 270 (1988).

283. Ann Davis, *Scandal Embarrasses Virginia's Hunton*, NAT'L L. J., May 13, 1996, at A1.

284. Wheeler, *supra* note 159, at 118-19. Wheeler urges other researchers that a fruitful method of learning about this phenomenon would be to interview offenders "who have been in the organizations that populate the financial world [because they] might be able to tell us *how they experienced* the corporate culture, and whether and how it encouraged or discouraged risk taking and illegality." *Id.* at 119.

285. Sally S. Simpson, *Corporate-Crime Deterrence and Corporate-Control Policies: Views from the Inside*, in WHITE COLLAR CRIME RECONSIDERED 289, 291 (Kip Schlegel & David Weisburd eds., 1992).

IX. FALLOUT FROM BILLING FRAUD

A. CIVIL LITIGATION

In addition to the criminal and disciplinary proceedings initiated in response to the allegations of billing fraud in the sixteen cases, most of the cases spawned a variety of civil litigation. Some clients sued the firms for legal malpractice or simply for a refund of amounts improperly billed. Some of the firms sued the lawyers for reimbursement of amounts stolen from the firm or from clients of the firm. In some cases, other lawyers in these law firms have sued for wrongful discharge, alleging that they were terminated at least in part for complaining about billing or expense fraud by the lawyers whose conduct is examined in this article. While it was not possible to identify all of the litigation generated as a result of these cases of billing and expense fraud, that which could be identified is summarized in Table 7.

TABLE 7  
CIVIL LITIGATION RESULTING FROM BILLING FRAUD<sup>286</sup>

	Name & Alleged Amt. Stolen	Civil Litigation Resulting From Billing Fraud
1	Edward S. Digges, Jr. \$3.1M	Dresser Industries sued the law firm, Digges, and his partners for fraud, breach of fiduciary duty, and breach of contract. Partners Wharton and Levin were found jointly and severally liable for \$3.1 million, the amount by which Digges overbilled Dresser. The partners were held liable because “under Maryland law, all partners are bound by a co-partner’s malicious act which is committed within the scope of the business of the partnership, even if the co-partners did not authorize, participate, or ratify the tortious conduct.” <sup>287</sup> Also the partners were found to have benefitted financially from the billing fraud. The firm was found to have breached its contract with Dresser “by charging . . . for the time of . . . secretaries and . . . receptionists, whose job titles were misrepresented on bills. DWL also failed to represent Dresser at a cost as modest as the firm could maintain.” (Dresser 89) The firm’s malpractice insurer was not obliged to pay the \$3.6 million (including interest) judgment because the partners “at the very least . . . ‘remained passive’ after having knowledge of Digges’ overbillings,” and for other reasons. (St. Paul 94)

286. Information was not available on civil litigation resulting from some of these cases. Where information was not available, the lawyer’s name is not included in the table.

	Name & Alleged Amt. Stolen	Civil Litigation Resulting From Billing Fraud
2	Harvey Myerson \$2.5M	Shearson Lehman sued Myerson & Kuhn for \$2 million, alleging that the firm had billed for more hours than the lawyers had worked. (Cohen 89a) The firm denied overbilling, claimed that it was entitled to a fixed amount of fees each month, regardless of the number of hours worked. (Cohen 89c) The firm agreed to pay nearly \$1.1 million to settle this lawsuit. (Cohen 89d) However, the firm failed to pay almost \$500,000 of the settlement, and Shearson obtained a judgment against the firm for that amount. (Shearson v. Myerson & Kuhn 93)
3	Wilkes "Skip" Morgan \$2.3M	Bronson, Bronson & McKinnon and Hartford, its malpractice insurer, had agreed that the insurer should pay the firm \$2,669,000 under the firm's policy for losses suffered as a result of Morgan's theft while he was at the firm. The firm claimed Morgan had stolen \$3.5 million from the firm and its clients. The insurance company initially paid \$1,685,000 of the amount promised, but claimed that it should not have to pay the remainder because the firm had recovered that amount from Morgan's assets. An arbitration panel awarded the firm \$984,000, finding that Hartford had to pay the full amount before it could assert its right to the money. (Steuart 94)
4	H. Lawrence Fox \$1.62M	Fox was alleged to have colluded with Richard McCostis, outside general counsel to Barr Labs, to overbill Barr, a client of Fox's, by \$756,251.75, which was divided between them. Winston & Strawn reimbursed Barr Labs, and sued McCostis and Fox for reimbursement. McCostis' insurer declined to defend him based on a policy exclusion of suits for "the return of or restitution of legal fees." (McCostis 94) The Second Circuit found the clause ambiguous as to its application to disputes over fees paid to third parties, and remanded for consideration of extrinsic evidence on intent. (McCostis 94)

287. *Dresser Indus. v. Digges*, 1989 U.S. Dist. Lexis 17396 at 16 (1989), quoting *Meleski v. Pinero Int'l Restaurant*, 47 Md. App. 526, 531 (1981).

	Name & Alleged Amt. Stolen	Civil Litigation Resulting From Billing Fraud
6	William F. Duker \$1.4M	Duker and his former firm agreed to a civil settlement under which Duker and the firm would pay nearly \$3 million dollars to the US in settlement of civil claims arising out of Duker's fraud against the FDIC and RTC. (Press Release 97) <sup>288</sup> The firm was to pay \$350,000 of the \$3 million settlement, and Duker was to pay the balance. (Fitz-Gibbon 97, Walsh 97)
8	Gary Fairchild \$784T	Chester Nosal, a former partner at Winston & Strawn, sued the firm for wrongful discharge. Nosal was one of 20 partners laid off in '93. The partner layoff was orchestrated by then-managing partner Gary Fairchild. Nosal alleged bad faith retaliation by the firm for Nosal's repeated requests to examine firm books and financial statements. Nosal asserted that if he had been permitted to review financial records, as provided in the partnership agreement, he might have discovered Fairchild's embezzlement. In 1996, an Illinois appellate court found summary judgment improper because there was a question of fact whether the expulsion of 20 partners was a violation of their duty of good faith to each other. <sup>289</sup> If the firm is found to have wrongfully fired Nosal, it could be subject to judicial dissolution. (Nosal 96, Winston 96)
9	Michael X. Morrell \$500T	Akin, Gump paid \$3.2 million in settlement to two of Morrell's clients to avoid being sued for malpractice. (Torry 95) The firm sued Morrell for reimbursement. The case was dismissed because Morrell had paid a \$50,000 settlement to one of the companies; the settlement was found to preclude additional liability. (Relief 95)

288. This is more than the amount stated in the guilty plea; different factors were used in the calculation of civil damages.

289. The opinion stated that "It is well-established that a fiduciary relationship exists between partners and that each partner is bound to exercise the utmost good faith and honesty in all matters relating to the partnership business." *Ill. App. Ct. Revives Expelled Partners' Suit Against Chicago Firm*, PROF. LIABILITY LITIG. REP., May 1996, at 3 (summarizing *Winston & Strawn v. Nosal*, No. 1-95-0819 (Ill. App. Ct., 1 Dist. 1996)).

	Name & Alleged Amt. Stolen	Civil Litigation Resulting From Billing Fraud
10	Webster Hubbell \$482T	In '96 the Rose Law Firm sued Hubbell for \$457,000 in damages for fraud, larceny and embezzlement. Hubbell was ordered to pay \$135,000 in restitution when he was sentenced after pleading guilty to criminal charges. (Rose 96) The suit was settled by consent judgment in '96. Hubbell agreed to reimburse the firm \$300,000, including all but \$25,000 of the restitution ordered by the criminal court. (Consent Judgment)
15	Stanford D. Hess \$110T	Fairfax Savings Bank, Hess' primary client at Weinberg & Green, sued the firm for \$70 million for legal malpractice, alleging that Hess padded bills, sometimes by more than 30%, and that Weinberg handled a matter in which it had a conflict of interest and failed to provide the bank with sufficient advice regarding some loan documents. (Bowling 95a) The firm claimed it had disclosed the potential conflict, and that Fairfax had waived malpractice claims in exchange for payment of \$275,000. (Berkman 95a)  The trial judge ruled that the firm was not liable for malpractice because the bank had waited too long to sue. The firm had disclosed the fee inflation to Berman in 1987 and reimbursed him. Berman had signed releases from any liability for the overbilling. (Bowling 95d) The bank waited until '94 to file suit over the events that occurred between '84 and '87. Meanwhile Hess and others at W & G continued to represent Fairfax. (Torry 95) The judge called Hess "greedy" and described his conduct as "outrageous." Without finding civil liability, the judge noted that criminal prosecution and disciplinary action could still be brought. (Bowling 95d)

	Name & Alleged Amt. Stolen	Civil Litigation Resulting From Billing Fraud
16	Scott J. McKay Wolas	Two of the former associates are suing for wrongful discharge because they claim they were forced out of the firm after they complained about Wolas' billing practices. (Davis 97) One of these suits was dismissed after a successful summary judgment motion by the law firm; the court concluded that the associate was terminated before he raised any concerns about Wolas' billing practices. (Geary 97, Geary 99) At least two lawsuits have been filed against Wolas and Hunton & Williams by investors in the liquor scheme, alleging fraud and securities violations. The suits assert that the firm knew Wolas was engaged in an illegal investment scheme and failed to intervene. (Shoket 96)

One important benchmark in this snapshot of civil liability for billing fraud is the Maryland decision that Ed Digges' partners were jointly and severally liable with him for the \$3.2 million malpractice judgment that resulted from Digges' overbilling.<sup>290</sup> The malpractice insurer was found not to be obliged to pay this judgment.<sup>291</sup> The Digges story may be the most resonant of these cautionary tales.<sup>292</sup>

Many firms have elected to reimburse clients for amounts improperly billed and then attempted to collect from the lawyers who engaged in overbilling. Some of the lawyers have worked valiantly to pay for all of their misconduct, but in other cases the firms have had some difficulty collecting reimbursement from the offending lawyers. Michael Morrell, for example, escaped liability to Akin Gump by making a separate (relatively modest) settlement with one of the clients.<sup>293</sup>

Recently a few lawyers who were professionally harmed by these lawyers' misconduct have sued to obtain compensation from the law firms. Among these are the wrongful discharge suits brought by lawyers at Winston & Strawn and

290. *Dresser Indus., Inc. v. Digges*, No. JH-89-485, 1989 WL 139234, at \*5-6 (D. Md., 1989), *aff'd*, 972 F.2d 341 (4th Cir. 1992).

291. *Id.* at 5-6.

292. For a general discussion of partner liability, see Robert R. Keating, *Liability of Members*, 243 A. L. I. 125 (1996); Charles O. Lorenson, *Firms Should Consider Limited Liability Entities*, 9 W. VA. LAW. 14 (July 1996); John Richards, *Illinois Professional Service Firms and the Limited Liability Partnership: Extending the Privilege to Illinois Law Firms*, 8 DEPAUL BUS. L.J. 281 (1996); Walter D. Schwidetzky, *Is It Time to Give the S Corporation a Proper Burial?*, 15 VA. TAX REV. 591 (1996); *Developments in the Law, Lawyers Responsibilities and Lawyers Responses: Shifting the Costs of Liability*, 107 HARV. L. REV. 1651 (1994).

293. A source for this information is identified at Table 7.

Hunton & Williams, claiming that the firms retaliated against them for attempting to intervene in the billing practices of, respectively, Gary Fairchild and Scott Wolas.<sup>294</sup> These represent one corner of the burgeoning litigation by lawyers against their law firms.<sup>295</sup>

## B. CONSEQUENCES TO THE LAWYERS

Almost all of the lawyers resigned or were fired from the law firms at which the billing and expense fraud took place. Some of them then became partners at other firms or carried on practicing law in the face of allegations of serious unethical and/or criminal conduct. Stanford D. Hess left Weinberg & Green to become a partner at Neuberger, Quinn, Geilen, Rubin & Gibber, P.A., where he remained until he was suspended. James Crowley was forced to resign from Thomson, Hine, but two weeks later had become a partner at Reminger & Reminger, a smaller Cleveland firm.<sup>296</sup> This affiliation apparently terminated when he was indefinitely suspended from practice in Ohio.<sup>297</sup> William Appler rented office space at Epstein, Becker & Green and set up a solo practice that lasted four years until he was disbarred in D.C.<sup>298</sup> More recently Appler has worked as a consultant on FDA matters in D.C.<sup>299</sup>

Part of the story told by this "where are they now?" inquiry is that life goes on and people survive enormous adversity. After Gary Fairchild was released from prison, he began working as a sales executive for a corporation that he once represented.<sup>300</sup> Harvey Myerson availed himself of the Florida homestead exemption, which protects any personal residence from the reach of creditors, and bought a historic mansion in Key West, Florida.<sup>301</sup>

James Crowley was not able to survive the adversity that followed his billing fraud. He committed suicide on October 6, 1997.<sup>302</sup> Crowley purchased and managed a restaurant and bar after he was suspended from the practice of law. He later separated from his wife and moved into an apartment above the restau-

294. *Id.* See *Wieder v. Skala*, 609 N.E.2d 105, 106, 110 (1992) (stating that a firm's efforts to impede or discourage a lawyer's compliance with the disciplinary rules followed by a discharge is sufficient to state a cause of action for wrongful discharge of an employee at will).

295. See Richard C. Reuben, *Suing the Firm*, A.B.A. J., \_\_\_ 1995 at 68 (discussing the increase in wrongful termination of employment suits filed by lawyers against their law firms).

296. Solov, *supra* note 156, at F1.

297. Chris Thompson, *State High Court Bans Lawyer: Ex-Thompson Hine Partner Suspended for Overbilling Scam*, CRAIN'S CLEVELAND BUS., July 25, 1994, at 2.

298. Murawski, *supra* note 143, at 1.

299. *Summit, Visx Venture Files Suits to Collect Eye-Laser Royalties*, WALL ST. J., Sept. 11, 1996 at B7.

300. Rooney, *supra* note 140, at 1.

301. Dan J. Schulman, *The Constitution, Interest Groups, and the Requirements of Uniformity: The United States Trustee and the Bankruptcy Administrator Programs*, 74 NEB. L. REV. 91, 109 (1995).

302. James F. McCarty, *Lawyer's Suicide Leaves Questions*, PLAIN DEALER, Oct. 14, 1997, at 1B.



rant.<sup>303</sup> Although Crowley made "a lot of new friends" in the restaurant and bar business, his employees reported that he was "distraught."<sup>304</sup> In contemplating why Crowley would kill himself, managing partner at Remington and longtime friend Mario Ciano recalled Crowley's comment at his suspension hearing: "Law is my life."<sup>305</sup>

Scott Wolas disappeared with some unknown millions obtained from his Ponzi scheme. He is reported to have repaid his partners who had invested in the scheme prior to his departure.<sup>306</sup>

### C. WHO GOT REPAID BY WHOM?

A number of the sixteen lawyers have made valiant efforts to repay the people they defrauded. In a way these efforts offer an impressive display of moral character. Many people get into some type of trouble or engage in some sort of illegal conduct. Some of them get caught and a few really work at making it right. William Appler, Gary Fairchild, Timothy Flato, and Skip Morgan did not wait to be compelled to make restitution, but undertook to do so on their own initiative. Most notable perhaps is Skip Morgan, who admitted the alleged misconduct as soon as the questions were raised, and simply turned his assets over to the firm, including his home, his cars, and his airplane.<sup>307</sup>

One cannot avoid the contrasting image of Harvey Meyerson residing in his \$1.8 million seaside villa in Key West.<sup>308</sup> A similar contrast is the saga of H. Lawrence Fox, whose homes in Alexandria and Nags Head and his pension account were seized by court order to provide funds for restitution.

A significant number of firms repaid their clients for proven overbilling. Some clients continued to use the services of the firms, and assisted the firms in damage control after the billing fraud became public. After Chapman & Cutler repaid the Harris Bank, a spokeswoman for the bank reported that the bank had been fully reimbursed. She said "We felt Chapman & Cutler handled the matter appropriately and our relationship with them has not changed. . . No customer has

303. *Id.*

304. *Id.*

305. *Id.*

306. Voboril, *supra* note 180, at B4. Scott Wolas is not the first lawyer to go into hiding to avoid facing allegations of massive theft. Another lawyer who (presumably) took the money and ran is Steven Romer, who disappeared on New Year's Eve claiming to have a terminal illness after he was accused of having stolen over \$7 million from client trust accounts. Arlynn Leiber Presser, *The Case of the Vanishing Lawyer: Prosecutors Say N.Y. Attorney's Friends, Clients Lost Millions*, A.B.A. J., \_\_\_, 1991, at 26. Timothy O'Leary vanished after admitting to stealing from his former clients' trust accounts. Paul Langner & Frank Phillips, *O'Leary is Indicted on Charges of Embezzling*, BOSTON GLOBE, Jan. 14, 1992, at B1. David M. Murray, Sr. committed suicide after the FBI raided his law office upon receiving reports from clients of theft and embezzlement. *Claims Stack Up Against the Estate*, RICHMOND TIMES-DISPATCH, Mar. 19, 1992, at B1. Claims against Murray's estate totaled \$41 million. *Id.*

307. Mintz, *supra* note 221, at 1.

308. Peter Maas, *Harvey Myerson Redux; Indicted New York, New York Attorney*, ESQUIRE, Dec. 1992, at 77.

suffered any financial loss and we are convinced it was an isolated incident.”<sup>309</sup> This statement evidences a pretty cozy lawyer-client relationship. How could billing fraud of \$1.1 million over approximately eight years can be characterized as “an isolated incident”? If Maureen Walsh perpetrated billing fraud unchecked for eight years, it seems apparent that the firm structure for supervision of lawyers and for review of time and expense records was grossly deficient. So why is the client so unconcerned?

Not all the clients are so protective of their lawyers, however. One client of the Rose Law Firm, Mahlon Martin, president of the Winthrop Rockefeller Foundation, said “[t]he Webb Hubbell thing creates in the minds of people [a question of] whether that was an isolated incident or something that went on regularly.”<sup>310</sup>

Concerns about billing led to the demise of the lawyer-client relationship between Harvey Myerson and Donald Trump. At the time that he started Myerson & Kuhn, Myerson boasted that Trump was among his clients. Trump, however, said that he was not a client of Myerson’s at the new firm; Trump had fired Myerson because of excessive billing. Trump was quoted in the *Wall Street Journal* as saying “Harvey ‘started billing me four times more than he should have. . . . The bills were too high and I wasn’t satisfied.’”<sup>311</sup>

TABLE 8  
REPAYMENT OF STOLEN MONEY<sup>312</sup>

	Name & Alleged Amt. Stolen	Amount Repaid by Lawyer or by Firm to Firm, Clients, or Firm’s Insurer
2	Harvey Myerson \$2.5M	After Myerson & Kuhn declared bankruptcy, partners were given the option of contributing to a firm bankruptcy fund in exchange for immunity against personal law suits. Although approximately ninety percent of Myerson’s partners contributed to the fund, Myerson elected not to do so. <sup>313</sup>

309. Stevens, *supra* note 280, at B3.

310. Michael Weisskopf & Susan Schmidt, *Rose Fades as Potential Clients Smell Problems with Law Firm*, COM. APPEAL, Dec. 29, 1994, at A4.

311. Laurie P. Cohen, *Big Spender: Law Firm That Tried to Buy Instant Stature is Coming Unglued*, WALL ST. J., Oct. 11, 1989, 1989 WL-WSJ 464340.

312. In cases in which information on amounts repaid were not available, or where the information is reported in Table 7, the information or the lawyers’ names are omitted from the table.

313. Telephone interview conducted by Theresa J. Fuentes with Ronald Cohen, bankruptcy attorney of Myerson & Kuhn (Oct. 29, 1997). See Table 7 for further information on monies repaid.

	Name & Alleged Amt. Stolen	Amount Repaid by Lawyer or by Firm to Firm, Clients, or Firm's Insurer
3	Wilkes "Skip" Morgan \$2.3M	When confronted about his fraud, Morgan confessed and turned over all of his assets to the firm, including his home, his cars, and his plane. His assets were worth approximately \$1 million. (Mintz 92) The firm indicated in December '92 that it had "recovered roughly \$500,000 in cash from, among other things, insurance payments and credits to client accounts." (Osborne 92)
4	H. Lawrence Fox \$1.62M	Restitution order resulted in the sale of Fox's homes in Alexandria, VA and Nag's Head, NC, and the use of the proceeds toward payment. (Groner 92) Court order also required retirement account to be placed in escrow for restitution, except for \$100,000 to be used to pay taxes and legal fees. (Ex-Lawyer 92)
5	Maureen Walsh \$1.48M	Chapman & Cutler repaid \$1.8 million to Walsh's former clients. (Glodberg 94, Rooney 95) The firm reportedly reimbursed all clients who were overbilled. (Stevens 94b) Walsh agreed to pay \$50,000 in restitution to Chapman for expenses improperly billed to the firm. (Buttry 97)
7	William Appler \$1.1M	Appler agreed to reimburse his former firm and the firm's insurer over \$1 million. (Murawski 94) As of January '96, he had repaid over \$600,000. (Ponce 96)
8	Gary Fairchild \$784T	Fairchild repaid the firm about \$700,000; (Duncan 94) assigned the firm control over his capital investment in the firm, over \$200,000. (Dillon 94)
11	James T. Crowley \$385T	The firm repaid or credited the accounts of the 10 affected clients and recouped \$94,916 from Crowley's capital account and money he was to have earned. The firm expected to collect some of the remaining monies from insurance. (UPI 93, Re Crowley 94)

	Name & Alleged Amt. Stolen	Amount Repaid by Lawyer or by Firm to Firm, Clients, or Firm's Insurer
12	Timothy Flato \$300-400T	Mark Snell, chief financial officer at Latham & Watkins, stated that all clients who had been overbilled as a result of Flato's misconduct had been reimbursed. (Mintz 96) Two of those clients were the Deutsche Bank and the James River Corporation, a paper company. Both were reimbursed and continued to be clients of the firm. (Crawford 96b) Flato promised to repay all excessive or improper charges that he made. (Steuart 95a) As of April, 1996, Doron Weinberg, Flato's attorney, said he had paid approximately \$200,000. (Crawford 96a)
13	Richard Salomon \$254T	Mayer, Brown & Platt said it would repay clients \$415,000 in overcharges plus interest. (Nachman 94)
14	Sherman F. Taub \$225T	Taub entered into an agreement with Tenzer, Greenblatt under which the firm would reimburse clients and Taub would repay the firm. (Statement of Charges)
15	Stanford D. Hess \$110T	Weinberg & Green repaid Fairfax \$475,000, which included the amount by which the firm had overbilled Fairfax and the "consequences" of the overbilling. (Berkman 95b) At the disciplinary hearing, Bar Counsel stated that \$10,000 of the money repaid to Berman by the firm was for release of malpractice liability. Hess claimed that the repayment agreement resulted in a windfall for Berman. (Memorandum)

#### D. SUBSEQUENT DEVELOPMENTS AT THE LAW FIRMS

It is impossible to draw clear causal connections between the recent developments at the law firms and the billing fraud described in this article. In the more egregious cases, some impact on the firms was inevitable. Here I comment not on the impact of the billing fraud, but on what has happened to these law firms since the lawyers' misconduct was discovered. I raise questions but draw no conclusions about whether some of these changes were triggered by the discovery of billing and expense fraud.

Two of the firms have been dissolved. Myerson & Kuhn filed a Chapter 11 bankruptcy in December, 1989 in the Eastern District of New York;<sup>314</sup> Bronson, Bronson & McKinnon dissolved in 1999.<sup>315</sup> Two firms have changed their names.<sup>316</sup> Two firms have diminished in size since the events described in this article. Some lawyers have left Weinberg & Green, including its managing partner. The loss is attributed by some to the Stanford Hess matter and to other malpractice litigation. In 1999 Weinberg & Green merged with Saul, Ewing, Remick & Saul, and became Saul, Ewing, Weinberg & Green. Chapman & Cutler also has shrunk in recent years; this might be related to the negative publicity generated by the investigation and indictment of Maureen Walsh. Chapman also had a change in management, including the election of a new management committee that did not include James Spiotto, whose high billings also had been questioned.<sup>317</sup>

After H. Lawrence Fox was fired from Winston & Strawn, his group, which handled transactions relating to waste disposal, moved on to another firm. Gary Fairchild's resignation from Winston was followed by a reorganization of the firm management, and the substitution of a pair of managing partners for the position previously held by Fairchild alone. Unlike some of the other firms, Latham & Watkins appears to be untouched by difficulty. In 1996, for example, Latham increased in size by thirty lawyers.<sup>318</sup>

Some of these cases generated substantial negative publicity and were extensively covered in both mainstream and legal newspapers. The high-visibility cases include Webster Hubbell, Harvey Myerson, Gary Fairchild, Maureen Walsh, and Ed Digges. Other cases, such as those of James Crowley, Sherman Taub, and Michael Morrell, remained almost unknown to the public. The Flato matter received limited coverage even though Timothy Flato was recognized as a rising star in the profession.

What accounts for the difference in coverage? One factor must be the lesser notoriety of certain of the lawyers, and the greater fame of certain others, such as Webb Hubbell. Another is the careful management of some of these cases to avoid publicity. The lawyers who quickly admitted the allegations, resigned from the bar and plead guilty to criminal charges tended to get less press attention than those who fought the charges. Harvey Myerson was the only one who went to trial on criminal charges. Maureen Walsh resisted admitting to criminal charges, and remains a respondent in a disciplinary proceeding.

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314. Myerson & Kuhn's bankruptcy plan was confirmed in December, 1991. The plan was funded primarily by partner contributions. Creditors received twenty-five to thirty cents on the dollar over a five-year payout plan. Telephone interview conducted by Theresa J. Fuentes with Ronald Cohen, bankruptcy attorney of Myerson & Kuhn (Oct. 29, 1997).

315. Kevin Livingston, *Bronson Hits the End of the Line*, RECORDER, April 5, 1999, at 1.

316. Digges, Wharton and Levin is now known as Wharton, Levin, Ehrmantraut, Klein & Nash. Duker, Barrett, Gravante and Markel is now known as Barrett and Gravante.

317. Sources for the information in this paragraph are identified in Appendix M.

318. *Id.*

All of these cases have received some journalistic attention but virtually no attention from legal scholars. Why? Perhaps it is that billing fraud is not yet recognized as a significant category of lawyer misconduct.

## X. CONCLUSION

The purpose of this study is not to bring the legal profession into even greater disrepute than is the current view of the American public,<sup>319</sup> but to open a dialogue about billing and expense fraud with an eye to prevention and deterrence of this type of professional misconduct. Prevention or deterrence could occur through education of lawyers, clients or firm managers, through implementation of institutional controls designed to guide and monitor billing practices, or through formal legal action against lawyers who engage in billing or expense fraud, including criminal, disciplinary and malpractice action. Each enforcement action, whether private or public, formal or informal, may impact the lawyer or firm involved directly but may indirectly affect many other lawyers, clients and law firms by increasing their awareness of this type of conduct and its risks.<sup>320</sup> Billing and expense fraud are complex and elusive problems. Their solution requires use of the whole public and private repertoire of methods that might prevent or deter billing fraud.

Much social science research on white collar crime tends to overemphasize criminal or other formal regulation or punishment, and not to give enough attention to the role of private organizations (in this case law firms and client corporations) in solving the problem.<sup>321</sup> In fact, the study of the prevention or deterrence of billing fraud could offer useful guidance for policy makers in thinking about control of other financial misconduct within large organizations or for understanding mechanisms for social control.<sup>322</sup>

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319. One recent Harris poll reports that only 19% of the American public views law as a "very prestigious" profession, down from 36% in 1977. Chris Klein, *Lawyers Not Liked*, NAT'L L. J., Aug. 25, 1997, at A6. In a different study, Harris found that only 7% of respondents had "a great deal of confidence" in people who run law firms. *Id.* Law firms were the lowest ranked of fourteen types of organizations. *Id.*

320. Sociologist Sally Simpson writes that:

Compliance and deterrence, as two distinct types of social control, have different aims. The former is preventative, the latter postmonitory. . . . Corporate compliance systems can be both. Deterrence may be achieved through sanctions levied by the company against the wrongdoer (for example dismissal, demotion or other disciplinary action). Prescriptive remedies, on the other hand, are nonpunitive. Through policies, programs and informal mechanisms, they provide support and direction for managers who must make ethical choices. However, not all compliance systems are effective. Simpson, *supra* note 285, at 300.

321. *Id.* at 302-03.

322. Authors Kip Schlegel and David Weisburd made this point about the study of white collar crime:

we are struck by the opportunities that white collar crime study offers for the development of a broader understanding of the role of noncriminal governmental and nongovernmental social controls. The choice of civil sanctions in prosecution, the role of governmental and professional agencies in establishing compliance mechanisms, and the attempts of corporations to "police themselves" . . . make the study of white-collar crime a fertile area in which to develop theories about the relationship

These sixteen cases, though diverse, evidence some common patterns that could be useful in thinking about how to prevent or to detect individual misconduct and about institutional changes that would support honest billing and offer training, supervision, and monitoring to ensure honest billing.

#### A. PATTERNS AMONG THE FIFTEEN LAW FIRMS

Some of the patterns relate to the structure of the law firms in which these cases occurred; these patterns are typical of large and other elite law firms in the United States.

*Most of the law firms at which these cases occurred bill most of their clients by the hour.*<sup>323</sup> This alone is a prescription for dishonest conduct. As long as lawyers are making records of how long they work on particular matters, and the time recorded translates into dollars billed, there is an incentive to record more time than was actually worked, and/or to do unnecessary work in order to bill for it. Many lawyers, of course, would not inflate their hours or their work, but those whose moral compass is less focussed will do so. The use of hourly billing is recognized to be a disincentive to efficient work or to settlement.<sup>324</sup> By setting annual billable hour targets for lawyers, law firms may invite—perhaps almost require—dishonest recordation of time.<sup>325</sup>

*Most of the law firms at which these cases occurred set annual targets or minimums for lawyers; many large firms have annual targets of 2000 or more hours per year.*<sup>326</sup> The firms at which the sixteen lawyers practiced law are not unusual in this respect. But the setting of targets combines with the hourly billing structure to provide incentives to record more time than was actually worked or to work on a matter longer than is needed to accomplish the desired goal. This is particularly so because most lawyers need to work three hours to bill two.<sup>327</sup> This

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between alternative social control mechanisms. Kip Schlegel & David Weisburd, *Returning to the Mainstream: Reflections on Past and Future White-Collar Crime Study*, in *WHITE COLLAR CRIME RECONSIDERED* 363 (Kip Schlegel & David Weisburd eds., 1992)

323. See Appendix C, which refers to the annual amounts billed or the number of hours billed annually by many of these lawyers.

324. William D. Underwood, *Divergence in the Age of Cost and Delay Reduction: The Texas Experience with Civil Justice Reform*, 25 TEXAS TECH. L. REV. 261, 272 (1994) ("Hourly billing thus encourages lawyers to resolve doubts on whether to conduct discovery in favor of doing so."); Eugene R. Gaetke, Sarah N. Welling, *Money Laundering and Lawyers*, 43 SYRACUSE L. REV. 1165, 2000 (1992) ("Hourly billing promotes delay and time-sheet padding and in criminal and civil cases tempts defense lawyers to reject settlement and go to trial.")

325. See Ross, *supra* note 54, at 12-14. Professor Ross urges that "it is highly questionable whether the overwhelming majority of attorneys are able to bill significantly more than 2,000 hours per year without making very liberal allowances for the way in which time is recorded." *Id.* at 14.

326. See Section IIA for discussion of the increasing number of billable hours demanded of lawyers by large law firms.

327. WILLIAM G. ROSS, *THE HONEST HOUR: THE ETHICS OF TIME-BASED BILLING BY ATTORNEYS* 27 (1996) (articulating assumption that "an attorney normally must spend three hours in the office for every two billable hours.")

means they would need to work 3000 hours a year to bill 2,000.<sup>328</sup> Three thousand hours per year translates into a sixty hour workweek for a lawyer who takes two weeks vacation and no sick days. If the lawyer works six days a week, she must work ten hours a day. Those who cannot or do not wish to mortgage their entire lives to work must either risk dismissal for billing too few hours or must bill more hours than are properly billable.<sup>329</sup>

*Most of the law firms at which these cases occurred use the number of hours billed per year as a primary criterion to evaluate and compensate lawyers.* The incentive to overbill already present as a result of hourly billing and as a result of the annual targets is intensified by this enforcement mechanism. A lawyer whose hours are too low might lose his job. A lawyer who meets or exceeds the annual target is more likely to be made a partner and is more likely to receive a bonus than a lawyer who fails to meet the target.

*Many of the law firms are among the largest, wealthiest, and most respected law firms in the United States, or are spin-offs from such firms.*<sup>330</sup> Perhaps the incidence of large-scale billing fraud is greater in firms that send huge bills to large institutional clients every month. This could mean that billing and expense fraud are less likely to be noticed. It could be that there is so much money around that the temptation to steal is greater.

There are some patterns in the way that these sixteen cases of billing and expense fraud came to light, and in the response of firms and others to the allegations.

*Many of the initial inquiries about billing or expense fraud came not from clients or partners of these lawyers, but from associates, secretaries, and other non-lawyer personnel within the firms.*<sup>331</sup> Many of the discoveries were happenstance, almost none resulted from any routine institutional monitoring of billing practices.

*The cases show some tendency of partners of these sixteen lawyers to wink at, deny, minimize or conceal the misconduct.*<sup>332</sup> In some cases some of the lawyers' partners knew of the misconduct before questions were raised by others. In many cases the firms reported the misconduct to the disciplinary agencies, but often they waited months or even years to do so.

#### B. PATTERNS AMONG THE SIXTEEN LAWYERS

Some of the patterns relate to the individuals who committed the billing and expense fraud.

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328. This ratio takes account of time spent on firm administration, pro bono work, and other non-billable work, coffee breaks, personal phone calls, errands, and so on. *Id.*

329. See Ann Davis, *Lug a Box, Scan Mail: Is It all Billable Time?*, WALL ST. J., Jan. 6, 1998, at B1.

330. See Section IVC and Table 2.

331. See Section VIIIA and Appendix H.

332. See Sections VIIIB and C and Appendices H and I.



*Most of these lawyers were highly educated, very successful, and respected for their professional skills and their integrity.*<sup>333</sup> This suggests that one cannot confidently assume that any lawyer is honest simply because he is well-educated, successful, and highly respected.

*Seven of the lawyers were managing partners, either of their firms or of the branch offices where they worked.*<sup>334</sup> They may have been subject to less oversight than other lawyers in the firms; in fact they were responsible for the oversight of other lawyers.

*Most of the lawyers were ambitious, high-income, high-billing lawyers.*<sup>335</sup> Some of them had annual draws exceeding \$500,000 per year; some of them billed over 2,500 hours per year.

*Most of these lawyers have moved firms once or more than once, often in search of higher incomes; their ambition has resulted in a loss of professional continuity and stability.*<sup>336</sup> This pattern does not differentiate these lawyers from other powerful, successful American lawyers, but it is possible that absence of lifelong collegial relationships and long-term institutional loyalty are ingredients in the occurrence of billing and expense fraud.

*All but one of the lawyers are (or were) affluent Caucasian men.*<sup>337</sup> In case one thought that race, class or poverty was a good predictor of economic crime, one might infer from this set of cases that high social status and high economic bracket correlate positively with economic crime. The almost total absence of women raises a question as to whether women are less likely to engage in billing and expense fraud than men, or whether it is only that few women are in the kind of powerful positions in their firms occupied by most of the lawyers in this sample. Perhaps the temptation to overbill is greater if one is subject to less oversight.

There are some patterns that describe a few or several but not all of the lawyers.

*Some of the lawyers seem to be aggressive, obnoxious, even abusive toward other lawyers or toward staff in the law firms, and/or self-centered, hedonistic, or greedy.*<sup>338</sup> Perhaps the lack of respect for others that manifested itself in demanding, hot-tempered behavior also is an ingredient in decisions to manipulate time sheets or expense claims. Another ingredient for some of the lawyers may be an almost compulsive acquisitive urge for unusual quantities of luxury items.

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333. See Appendix B.

334. *Id.*

335. See Section IVB and Appendix C.

336. See Appendix B for information on the movement of these lawyers through two or more firms during their careers, and Section VIA for discussion of the negative impact on professionalism of lack of stable professional bonds.

337. See Section VIC and Appendix D.

338. See Table 3 and Table 4, which give examples of behavior that fits this description.

*Some of the lawyers seem to have had significant problems with mental illness or alcohol abuse.*<sup>339</sup> What is more striking, perhaps, is that many of the lawyers were not suffering from mental illness or addiction, but were high-functioning lawyers. Some of the mental illness and substance abuse problems that appear may be one ingredient in the lawyers' misconduct. But since the competitiveness, intense work demands, and stress of the legal profession probably cause some mental illness and substance abuse,<sup>340</sup> one cannot dismiss the individuals who exhibit such problems as atypical of successful lawyers.

*Many of the lawyers had elaborate rationalizations for their billing and expense fraud.*<sup>341</sup> This ability to explain and defend questionable behavior is an important skill for any lawyer; used on behalf of a client, it may be well within the bounds of acceptable advocacy. Once the skill is developed, it is not surprising to see it used to justify dishonesty toward and theft from clients and partners.

*Several of the lawyers did an unusual amount of public service work or spent a great deal of time on firm management.*<sup>342</sup> It is possible that these lawyers were unable to work as many billable hours than some of their partners who had fewer community or firm commitments. If they were compensated less than others who billed more hours, the resulting resentment could be an ingredient in the billing and expense fraud.

#### D. RECOMMENDATIONS

The elimination of billing and expense fraud from the legal profession is an essential part of the project to restore public confidence in lawyers and in the legal system. Like attacking any endemic problem, the changes needed to accomplish this goal are many and varied. Every lawyer must concern himself with this issue. Every law firm should attend to it. Every bar association, every disciplinary agency has an essential role in this project. This is not a narrow or particularistic problem. It is a problem of restraining greed, of restoring integrity, of placing candor and respect for others above self-interest. Unfortunately many of the processes and dynamics that produce billing fraud are deeply entrenched in the norms of law firm culture.<sup>343</sup> Some of these suggestions may seem unrealistic. If so, perhaps greed cannot be disentangled from the practice of law.

*Hourly billing should be abandoned.*<sup>344</sup> Billing by the hour creates perverse

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339. See Section VID and Appendix E for information about mental illness and alcohol abuse.

340. See *supra* note 56.

341. See Section VIE and Appendix F for examples and discussion of the explanations offered by the lawyers for their misconduct.

342. See text accompanying notes 116 and 117.

343. See generally RICHARD ZITRIN and CAROL M. LANGFORD, *THE MORAL COMPASS OF THE AMERICAN LAWYER: TRUTH, JUSTICE, POWER, AND GREED* (1999).

344. See Anthony E. Davis, *Fees, Billings and Collections: Maximizing the Profits, Minimizing the Risk*, RISK MANAGEMENT REPORT, Dec. 1998, at 1 (argues for abandonment of hourly billing as a prudent risk management measure).

incentives and has contributed to the apparent erosion of the integrity of many lawyers. Large firms should negotiate fees in advance with institutional clients and with individual clients. Fees should be negotiated in advance of work being performed. Lawyers, like construction contractors, automobile mechanics, and many other purveyors of complex services should learn to predict and estimate the cost of service. They should encourage clients to price shop, to foster competitive pricing and to allow clients to be confident that the fees they agree to pay are fair and reasonable.

*Firms that continue to use hourly billing should abandon the use of formal or informal targets or minimums.* The setting of incentives to bill more hours than a piece of work requires should be recognized as unethical, both because it offers tacit encouragement to padding and churning and because it encourages lawyers to work more hours in a day than they can possibly provide competent professional service.

*Law firms should not evaluate or compensate lawyers on the basis of the number of hours billed.* Lawyers who contribute to the firm through management work or to the community through pro bono work should be rewarded rather than penalized for such work. Likewise, lawyers who do quality work while raising children or caring for family members should not be penalized for their other obligations. Firms should hire more lawyers rather than taking over the entire lives of a smaller number of lawyers.

*Law firms should establish internal ethics counsels or ethics committees to develop expertise on issues of ethics and professionalism.*<sup>345</sup> An ethics committee should:

- establish written policies on billing practices and reimbursement for expenses
- offer regular training to partners (including managers), associates, law clerks, paralegals, secretaries and other staff, on billing practices and other ethical issues.
- encourage all firm employees to report possible misconduct to the ethics committee, and ensure that those employees are protected from retaliation for raising questions.

*Law firms should engage independent auditors to monitor billing practices.*<sup>346</sup> The monitoring function should include routine review of time logs and expense vouchers of associates, partners, and managers, and systematic audits of the billing practices of lawyers who bill 2,000 hours per year or more. Auditors and ethics counsel must have the unambivalent support of firm management to carry out these tasks.

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345. See Epstein, *supra* note 72 for discussion of the role of ethics counsels.

346. See Erin White, *More Law Firms Are Auditing Themselves to Catch Billing Errors*, WALL ST. J., July 14, 1998, at B8 (noting that the law firm of Proskauer Rose hired a full time auditor to monitor billing practices).

*Disciplinary agencies should be authorized to discipline law firms as well as individual lawyers.*<sup>347</sup> This authority should include (at minimum) the authority to impose discipline for failure to institute proper training, supervision and monitoring of lawyers and other staff to ensure compliance with ethical rules, and to impose discipline for failure to report serious misconduct within the law firm.

*Disciplinary agencies should enforce Rule 8.3, which requires reporting of serious misconduct by other lawyers.* Bar counsels should impose discipline on firm managers for failure or long delay in reporting misconduct by a lawyer in the firm.

*Lawyers should lower their income aspirations,*<sup>348</sup> *and should restructure their firms to foster a more humanistic and less competitive environment.* Firms should aspire to other values than maximum production of wealth, such as high quality professional service, client satisfaction, collegiality, mentoring, balanced lives for employees, work conditions that support the growth and development of all employees.<sup>349</sup> Firms should seek to regain a higher degree of continuity of personnel.<sup>350</sup> These goals cannot be achieved unless or until successful lawyers recognize the adverse consequences of their ever-higher income aspirations and scale them down.<sup>351</sup>

*Prosecutors and lawyer disciplinary agencies should pursue major billing fraud cases vigorously.* While considerable resources are needed to investigate and prosecute allegations of billing or expense fraud, the investment of such resources is likely to be a very efficient deterrent. The lawyer regulatory system has focussed most of its attention on lawyers whose practices are far more modest than the sixteen lawyers on this list.<sup>352</sup> More attention should be devoted to the

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347. See Schneyer, *supra* note 6.

348. Professor Deborah Rhode draws a connection between the profit orientation of firms and the setting of policies that increase the risk of billing fraud and cause other problems as well. Rhode, *Institutionalizing Ethics*, *supra* note 6, at 710–11. She notes that “[a]n increasing number of firms, annual billable hour requirements exceed 2000 hours . . . . The partners who benefit from 2000 hour demands generally earn many times the national average for lawyers . . . . Those who would benefit from more humane expectations . . . . [include] attorneys who are reluctant to fudge, yet who cannot honestly fulfill current requirements without compromising family, pro bono, or other commitments. *Id.*”

349. For an example of the ultimate consequences of disregard of human needs resulting from preoccupation with maximizing profits, see UPTON SINCLAIR, *THE JUNGLE* (1906) (describing the human devastation caused by the relentless work demands and exploitation of employees of the meat packing industry in Chicago in the early twentieth century).

350. Higher rates of retention and greater stability in firms would contribute to environments that would allow senior lawyers to mentor less experienced lawyers, and would have a greater institutional motivation to attend to the quality of life and other issues that contribute to high professional performance and satisfaction. See generally AMERICAN BAR ASSOCIATION, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE* (1996).

351. See Schlitz, *supra* note 87 (discussing the damage to mentoring and professionalism that has resulted from lawyers’ desire for higher incomes).

352. See ABEL, *supra* note 43, at 145 (stating that “[m]ore than 80 percent of those disciplined in California, Illinois and the District of Columbia in 1981–82 were sole practitioners, and none practiced in a firm of more than seven lawyers, even though sole practitioners represented fewer than half of all private practitioners in the nation (48.6 percent) and firms with more than seven lawyers contained almost exactly the same proportion (47.2 percent) (emphasis added).

prevention and correction of fiduciary failure by lawyers who represent large institutions.

#### APPENDIX A: TWENTY OTHER CASES OF BILLING AND EXPENSE FRAUD

The table below presents an overview of the other twenty cases in the group of thirty-six recent cases of billing and expense fraud from which the sixteen studied in detail are drawn.

	Name Firm Where Misconduct Occurred, Lawyer's Position	Alleged Amount Stolen, Methods, Dates	Prison Sentence (months) Yr. Imposed	Discipline or Resignation From Bar Membership
1	Lionel "Lon" Allan; Hop- kins and Carley, Santa Clara, CA, partner	expense fraud and bill inflation. Firm claimed that Allan's "billing improprie- ties forced the firm to refund over \$257,000 to clients." (Barlas 94)	none reported.	no public re- cord of dis- cipline (phone in- terview) <sup>353</sup>
2	Richard Ar- nold; Dins- more & Shohl, Cin- cinatti, part- ner	over \$75,000 expense fraud, June 1994-Au- gust 1995 (Kaufman 95)	guilty plea 1995 (Kauf- man 95)	interim sus- pension based on felony con- viction, Ohio, July 1997 (phone in- terview)

353. The telephone interviews referenced in this table were with officials at the relevant disciplinary agencies, and were conducted by research assistant Therese Fuentes on November 13, 1997.

	Name Firm Where Misconduct Occurred, Lawyer's Position	Alleged Amount Stolen, Methods, Dates	Prison Sentence (months) Yr. Imposed	Discipline or Resignation From Bar Membership
3	Lloyd Clareman;* Myerson & Kuhn, NY, partner, executive committee member	\$1.2M inflated bills, April 1988-January 1989 (Re Clareman)	none reported. Cooperated in Myerson prosecution. (Re Clareman)	public censure NY 1996 (Re Clareman)
4	Daniel James Cooper;* Myerson & Kuhn, New York	false billing statements (Re Cooper)	none reported.	one year suspension, NY 1992, reinstated 1994. (Re Cooper)
5	James F. Dougherty; solo practitioner, Florida	\$5M inflated bills, 1987 to 1992 (Lyons 94, Richey 94)	6½ years, 1997 (Journal of Commerce 97)	automatic suspension, FL, 1997 after felony conviction 1997 (Re Dougherty)
6	Forriss D. Elliott; solo practitioner, St. Louis, Missouri	over \$250T, bill inflation (80 hour days), 1989- 1992 (Bryant 95)	5 years, 1995 (Bryant 95)	suspended Missouri 1995 after conviction (phone interview)
7	Stephen A. Geiger; Sid- ley & Aus- tin, partner, NY office	\$54T, expense fraud, 1988- 1989 (Re Geiger)	none reported	disbarred NY 1991 (Re Geiger)

	Name Firm Where Misconduct Occurred, Lawyer's Position	Alleged Amount Stolen, Methods, Dates	Prison Sentence (months) Yr. Imposed	Discipline or Resignation From Bar Membership
8	Mark Clayton Kirby; <sup>354</sup> Brown, Kirby & Bunch, North Carolina, partner	\$1.5 million overbilled; (Saker 98) billed 13,000 hours in 13 months (1990-1991) by inflating time (Payton 95)	15 months, 1995 (Payton 95)	disbarred NC February 1997. (phone interview)
9	David Kohnen; Kohnen & Patten, Cincinnati, managing partner	over \$200T, false time entries, 1988-1992 Monk 94)	12 months probation 95 (Norwood 95)	resigned from Ohio bar 1995
10	Wayne E. Legg; Killian Nicholas, Arizona, senior partner	hundreds of thousands of \$, fictitious work, double billing, 1987 to 1992	15 years 1997 (Az. Business Gazette 97)	voluntary suspension, AZ pending disposition of criminal charges (Az. Republic 94)

354. Mark Clayton Kirby died in an automobile accident in June, 1998, about two years after his release from prison. His 11-year old daughter received minor injuries in the accident. During the years after his release he had moved with his family to a small town in Virginia and had obtained a real estate license. Anne Saker, *Ex-Lawyer Killed in Crash*, NEWS AND OBSERVER, June 24, 1998, at B1.

	Name Firm Where Misconduct Occurred, Lawyer's Position	Alleged Amount Stolen, Methods, Dates	Prison Sentence (months) Yr. Imposed	Discipline or Resignation From Bar Membership
11	Gary Noth- stein; Shaw, Pittman, Potts & Trowbridge, associate (94-95) Venable, Baetjer, Howard & Civilietti, partner (pre 82)	\$40T expense fraud, 1980- 1982 while at Venable. Later posed as Gary Notestein, recent law school graduate, to become associate at Shaw, Pitt- man. (Berk- man 95)	No criminal prosecution Committed suicide in 1995 (Berk- man 95)	disbarred, MD and D.C. 1984 for expense fraud at Venable firm.
12	Arthur Rueg- ger;* Myer- son & Kuhn, New York	inflated bills (Re Rueg- ger 95)	convicted of misdemeanor, fined, resti- tution or- dered (Re Ruegger 95)	one year sus- pension NY 1995, rein- stated 1996 (Re Rueg- ger 95, 96)
13	Mark Segall;* Myerson & Kuhn, New York	inflated bills (Re Segall)	no criminal prosecution; cooperated in Myerson case (Re Segall)	public censure 1996 (Re Segall)
14	Glenn Nadell; Katten, Mu- chin & Zavis, NY, partner, head of tax dept	\$31T, expense fraud, 1989- 1994 (Rooney 95)	none reported.	three year sus- pension, Ohio and IL (Re Nadell)



	Name Firm Where Misconduct Occurred, Lawyer's Position	Alleged Amount Stolen, Methods, Dates	Prison Sentence (months) Yr. Imposed	Discipline or Resignation From Bar Membership
15	Thomas Schneider; Seyfarth, Shaw, asso- ciate, then partner at Quasha Richter, NY	\$800 expense fraud, add- ing digits to credit card receipts over seven- month pe- riod in 1981 (Re Schneider)	none reported	30 day suspen- sion 1989 (Re Schneider)
16	Kenneth Solo- mon; Lav- enthol & Howarth, Chicago (accting firm), nat. chair, Shef- sky & Fro- elich, part- ner as of 1993	\$22T 1982 to 1990, double bill- ing for ex- penses, 1982-1990 (Cohen 93)	none reported.	one year sus- pension IL 1993 (Co- hen 93)
17	Charles E. Steele; Steele & Hoffman, Pittsburgh, managing partner	\$81T, padding hours, July 1992-April 1993 (Pitz 97)	2 years, 9 months 1997 (Pitz 97)	suspended PA March 1997 after crimi- nal convic- tion (phone interview)

	Name Firm Where Misconduct Occurred, Lawyer's Position	Alleged Amount Stolen, Methods, Dates	Prison Sentence (months) Yr. Imposed	Discipline or Resignation From Bar Membership
18	Lynn Boyd Stites; solo practitioner, Los Ange- les, CA	\$50M-\$200M, billing for unnecessary work, inflat- ing bills, 1984-1988, involved 25 other law- yers (Ander- son 94)	over 12 years 1994 (Pitzer 94)	suspended CA 1994 (Pitzer 94)
19	Robert C. Zimmer; Eckert Sea- mans, Washing- ton, DC, partner	\$40T expense fraud (Kessler 92)	pleaded guilty, mail fraud, other charges 1992 (Kessler 92)	disbarred DC 1994, FL 1994 and PA 1995 (Re Zim- mer)
20	Bob Zoccola; <sup>355</sup> Locke, Reynolds, Boyd & Weisell, Indianapolis, IN partner	\$48T, expense fraud and inflation of hours during six year pe- riod (Kueter- man 95)	none reported.	Resigned IN August 1995 (Re Zoccola 1); disbarred, US Sup. Court 1995 (Re Zoccola 2)

\*Partners or associates of Harvey Myerson, who is discussed in detail in this article. Myerson's partners are not included because their misconduct occurred under Myerson's direction. They were penalized less severely than Myerson in part because of their cooperation with investigators, and in part because Myerson was regarded as primarily responsible for the billing fraud committed by his partners.

In addition to the twenty cases on the "B" list, I excluded from this study cases involving several other types of stealing by lawyers. I did not include cases that involved the better-known and better regulated phenomenon of trust account

355. Zoccola was at one time president of the Indianapolis Bar Association. Greg Kueterman, *Expert: Many Firms Not Set Up to Stop Fraud*, INDIANA LAWYER, Oct. 4, 1995, at 5.

fraud, nor in misconduct by lawyers who fit the "bad apples" stereotype. I excluded:

- lawyers who stole money out of their client trust accounts, such as:
- **Steven Romer** stole seven million dollars from his clients. He claimed that he moved to Sierra Leone, had an inoperable brain tumor and had given away \$15 million to charity. He returned to New York one year later and was convicted of fourteen criminal charges. Romer was sentenced to a maximum of twenty-two and a half years in prison and ordered to repay the stolen funds.<sup>356</sup>
- **Jack B. Solerowitz**, an 86-year-old New York lawyer was sentenced to five to fifteen years in 1990 after conviction on criminal charges alleging that he had stolen \$6.8 million from his clients.<sup>357</sup>
- **Barry Grandeau** was disbarred in 1982 after he was indicted for stealing from client trust accounts. The New York State Client Security Fund made reimbursements to Grandeau's clients totaling \$589,829.00 on 373 separate claims.<sup>358</sup>
- **Peter Schmidt** was disbarred in New York and charged with stealing \$3.1 million from the estates of two clients; one was the former president of the New York Yankees.<sup>359</sup>
- **James O'Hagan**, a partner at Dorsey & Whitney, the largest firm in Minnesota, stole \$3 million of client funds. He was convicted of criminal charges and disbarred, and eventually repaid his former clients.<sup>360</sup>
- **Lloyd Cohen**, a New Jersey lawyer, was convicted in 1989 of charges that he had stolen \$1.4 million from clients. He was sentenced to spend eleven years in prison. Cohen also was sentenced to ten concurrent five-year terms for writing bad checks totaling \$17,000. This sentence was to run concurrent with the eleven-year sentence.<sup>361</sup>
- **Robert Anderson**, a New York lawyer and former US Secretary of the Department of the Treasury, stole over \$250,000 from one client.<sup>362</sup>
- **Thomas Bartch**, another Minnesota lawyer, stole \$800,000 and was disbarred.<sup>363</sup>
- lawyers who engaged in "settlement fraud", misrepresenting the amount for

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356. Henry J. Reske, *Romer Convicted*, A.B.A. J., Mar. 1992, at 35; *How Many Lawyers Steal How Much Money*, BILLINGS GAZETTE, January 8, 1992, at 5-A.

357. Rick Hampson, *Caseload of Attorneys' Bilking Clients Grows*, HARRISBURG EVENING NEWS, Jan. 7, 1992, at A1.

358. *Clients' Security Fund v. Grandeau*, 500 N.Y.S.2d 997, 999 (N.Y. 1986).

359. N.Y. L. J. Mar. 30, 1992, at 1, col. 1.

360. Randy Furst, *Dorsey & Whitney Ex-Partner Suspended, May Be Disbarred*, MINNEAPOLIS-ST. PAUL STAR-TRIBUNE, Dec. 6, 1989, at 1B.

361. *Ex-Lawyer Gets New Sentence*, NORTHERN NEW JERSEY REC., Mar. 19, 1989, at 13.

362. Margaret Zack, *Lawyers on the Wrong Side of the Law: Rash of Serious Misconduct Cases are Reported in State*, MINNEAPOLIS-ST. PAUL STAR TRIBUNE, Apr. 15, 1991 at B1.

363. *Id.*

which a case had been settled on behalf of a defendant client, collecting an inflated damage payment from the client, and pocketing the excess;<sup>364</sup>

- lawyers who committed fraud in charging contingent fees;
- court-appointed criminal defense lawyers prosecuted for overbilling states for services rendered to indigent clients;
- government lawyers prosecuted for stealing from their employer agencies;
- lawyers prosecuted or disciplined for billing fraud involving smaller sums.

#### APPENDIX B: EDUCATIONAL AND PROFESSIONAL ACHIEVEMENT OF THE LAWYERS

	Name and Alleged Amt. Stolen	Educational and Professional Background, and Areas of Practice
1	Edward S. Digges, Jr. \$3.1M	Digges, Wharton & Levin, Annapolis, MD, managing partner. Princeton Univ. A.B. 1968; Univ. of Maryland, J.D. 1971. Piper & Marbury, Baltimore, MD, associate 1971-1977; partner, 1977 to 1984, managing partner; Digges, Wharton & Levin, 1984 to 1990, co-founder, managing partner. Federal and state civil litigation, product liability defense, asbestos litigation for Dresser Industries. Active in Inns of Court, American Board of Trial Advocacy. (Groner 89) Publications: <i>The Impact of Liability for Enhanced Injury</i> , 4 BALT. L. REV. 1 (1975); <i>Product Liability in Maryland Revisited</i> , 7 BALT. L. REV. 1 (1977); <i>Comparative Fault in Maryland: The Time Has Come</i> , 41 MD. L. REV. 275 (1982); <i>Choice of Law in Product Liability Actions: Order for the Practitioner in a Reign of Chaos</i> , 12 BALT. L. REV. 395 (1983); <i>Product Liability in Maryland: Traditional and Emerging Theories of Recovery &amp; Defense</i> , 15 BALT. L. REV. 1 (Fall 1986); MARYLAND CIVIL PROCEDURE FORMS, 2 vol. (Aspen Publ. Co. 1984) (co-author).

364. For example, James O'Hagan was alleged to have told his client, the Mayo Clinic, that he settled a lawsuit against the clinic for \$596,000, when he had really only settled it for \$270,000. When the Clinic sent O'Hagan the \$595,000 check, O'Hagan paid the plaintiff \$270,000 and kept the rest for himself. Furst, *supra* note 360, at B1.

	Name and Alleged Amt. Stolen	Educational and Professional Background, and Areas of Practice
2	Harvey Myerson \$2.5M	Myerson & Kuhn, New York, managing partner, attended University of Chicago, 1957-1959; Temple University, B.S. 1961; Columbia University School of Law, LL.B. 1964. Hughes, Hubbard & Reed, New York, associate, 1964-1970; Webster & Sheffield, partner, 1970-1984; co-managing partner. Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey, New York, partner, 1984-1987, managing partner, head of litigation department (firm went bankrupt 1987). Federal civil litigation, administrative and regulatory practice, antitrust. Clients included Shearson, Lehman, Hutton, Inc., United Food and Commercial Workers' Union, ICN Pharmaceuticals, Inc. (Martindale 89)
3	Wilkes "Skip" Morgan \$2.3M	Bronson, Bronson & McKinnon, managing partner, Santa Rosa office. University of California at Berkeley, A.B. 1967, Hastings College of Law, University of California, J.D. 1973. Real estate, commercial litigation, wine industry specialist, toxic torts; Cessna Corp., Gulfstream Aerospace Corp. (Martindale 89)
4	H. Lawrence Fox \$1.62M	Winston & Strawn, managing partner, DC office, University of Virginia, B.A., 1961; LL.B. 1964; New York University, LL.M. in taxation 1965. Law clerk, Counsel for commandant, United States Marine Corps, DC 1964; Chief Counsel's Office, IRS, Washington, DC 1965-1969; assistant bureau chief, 1968-1969; Pepper, Hamilton & Scheetz, Washington, DC office, associate, 1969-1972, member, 1972 to 1977, managing partner, Washington office, 1976-1977; Cadwalader, Wickersham & Taft, member, 1977-1979; Dawson, Riddell, Fox, Holroyd & Jackson, which merged with Bishop, Cook, Purcell & Reynolds, which merged with Winston & Strawn. (Groner 91) 1980s Fox shifted to helping cities and counties finance and build solid-waste treatment plants. (Groner 91a)

	Name and Alleged Amt. Stolen	Educational and Professional Background, and Areas of Practice
5	Maureen Walsh \$1.48M	Chapman & Cutler, Chicago, non-equity partner. Notre Dame B.A.; Northwestern University, J.D. Moot court national team at Northwestern. Summer associate at Winston and Strawn when Gary Fairchild was the hiring partner. Sidley & Austin, associate, 1981 to 1984. One friend reported that when she left Sidley, someone at the firm had questioned her handling of a check. (Goldberg 94) Chapman & Cutler, associate, 1984 to 1990, became junior partner 1990, three years later was turned down for an equity partnership. (Goldberg 94b) Municipal bonds, commercial litigation.
6	William F. Duker \$1.4M	Duker, Barrett, Gravante & Markel, New York, New York, managing partner. State University of New York at Albany, B.A., <i>summa cum laude</i> 1976; University of Cambridge, England, Ph.D., 1978; Yale University, J.D., 1981; Phi Beta Kappa, Law Clerk to Chief Judge Patricia M. Wald, D.C. Circuit, 1981-82. Associate, Cravath, Swaine & Moore, 1982-1985. Assistant Professor, Albany Law School, 1985-1987. (Martindale 97) Founded Duker & Barrett, 1987, resigned 1997. Publications: A CONSTITUTIONAL HISTORY OF HABEAS CORPUS (1981); <i>English Origins of Habeas Corpus: A Peculiar Path to Fame</i> , 53 N.Y.U.L. REV. 983 (1978); <i>The President's Power to Pardon: A Constitutional History</i> , 18 WM. & MARY L. REV. 475 (1978); <i>The Case of Ex Parte Young: Lochnerizing Munn &amp; Illinois</i> , 1980 BRIGHAM YOUNG L. REV. 539 (1980).
7	William Appler \$1.1M	McDermott, Will & Emery, DC office, non-equity partner (1984-91). Northwestern University, B.A., 1963, M.A., 1965; Georgetown University, J.D. 1969; National Merit Scholar. Dept. of Justice, Civil Division, 1969 to 1973, Adjunct Faculty, Georgetown Law Center, 1969 to 1971, 1978 to (at least 1991); food and drug law. (Murawski 94)

	Name and Alleged Amt. Stolen	Educational and Professional Background, and Areas of Practice
8	Gary Fairchild \$784T	Winston & Strawn, Chicago, managing partner. Wheaton College, B.A. 1965, University of Illinois, M.A. 1966; Northwestern University, J.D. 1969. Assistant to Governor of Illinois, 1969-1970; United States Dept. of Justice, Chicago, 1971-1972; Winston & Strawn, associate 1973-75; partner 1976-94; managing partner, 1987-93. <i>American Lawyer</i> reported that "For seven years, Gary Fairchild enjoyed unparalleled trust and respect as one of the country's most well-known firm leaders." (Dillon 94)
9	Michael X. Morrell \$500T	Akin, Gump, Strauss, Hauer & Feld, DC, of counsel. Georgetown University, A.B., 1965. J.D. 1968, M.I.C.L. 1985. Meritorious Service Award, U.S. Department of Justice, 1972. President of LaSalle Laboratories, US affiliate of his French pharmaceutical client. Board of Regents, Georgetown University; Chairman, Friends of the John F. Kennedy Center for the Performing Arts. (Torry 95, Martindale 89) Publications: CERTIFICATE OF NEED: AN EXPANDING REGULATORY CONCEPT, MEDICINE IN THE PUBLIC INTEREST, INC. (1978); Maintenance of Opiate Dependent Persons in the United States: A Legal Medical History, Drug Use in America: Problem in Perspective, Appendix IV, Government Printing Office 1977, <i>reprinted in</i> LEGAL ASPECTS OF DRUG DEPENDENCE (CRC Press 1975); <i>Pharmaceutical Industry Regulation by the Department of Justice</i> , 23 SYRACUSE L. REV. 19 (1972), <i>reprinted in</i> 2 DRUG ABUSE LAW REV. 186 (Clark Boardman Co. 1974).

	Name and Alleged Amt. Stolen	Educational and Professional Background, and Areas of Practice
10	Webster Hubbell \$482T	The Rose Law Firm, Little Rock, 1973-93, managing partner. University of Arkansas, B.S.E.E. 1970 (electrical engineering degree), J.D. with Honors, 1973. Managing Editor, <i>Arkansas Law Review</i> , 1973; star offensive left tackle for the Univ. of Arkansas Razorbacks football team, the Razorbacks won the Sugar Bowl in 1969, Hubbell's senior year in college. (Ahrens 97) Mayor, Little Rock, Arkansas, 1979 to 1981 (non-salaried position). Member, Board of Directors, Little Rock, Arkansas, 1978 to 1984. Chief Justice, Arkansas Supreme Court, 1984. (non-salaried position). Associate Attorney General of the United States, January 1993 to March 1994. Chairman of the Ethics Committee of the Arkansas Bar Association; Chair of the Arkansas Board of Bar Examiners. <sup>365</sup> Commercial law, securities law, professional liability litigation. (Martindale 93, Eisler 95) At the time of Hubbell's Senate confirmation hearings, Senator Dale Bumpers (D-Ark) said "You'd have to go a long way in my state to find anybody who commands more respect, both professionally and as a person, than Webb Hubbell." (Schneider and Walsh 94)
11	James T. Crowley \$385T	Thompson, Hine and Flory, Cleveland, partner and chairman of the litigation department. Case Western Reserve University, B.A. 1965; University of Michigan, J.D. 1968. Phi Beta Kappa. (Martindale 89, 93, Who's Who 94-95)

365. Mr. Hubbell is "the highest ranking Justice Department official to stand convicted of crimes since the fall during the Watergate scandal of Attorney General Richard G. Kleindeinst and Attorney General John Mitchell." Stephen Labaton, *A Clinton Friend Admits Mail Fraud and Tax Evasion*, N.Y. TIMES, Dec. 7, 1994, at A1.



	Name and Alleged Amt. Stolen	Educational and Professional Background, and Areas of Practice
12	Timothy Flato \$300-400T	Latham & Watkins, San Francisco, partner starting in 1991, Lewis and Clark College, B.A. 1975, M.P.A. 1978, University of Southern California, J.D. 1981; Order of the Coif, Notes and Articles Editor, <i>University of Southern California Law Review</i> , 1980-81. Orrick, Herrington & Sutcliffe, associate 1981 to 1987, partner 1987 to 1991, 1988 head of project-finance group. (Newdorf 91a) Project finance law, real estate. "A premier international banking lawyer." (Mintz 96b) When Flato became a partner at Latham & Watkins, Ernest Schmider, a tax partner, said of Flato, "He is a very hard worker. That is something we think fits well in the Latham & Watkins culture." (Newdorf 91a)

	Name and Alleged Amt. Stolen	Educational and Professional Background, and Areas of Practice
13	Richard Salomon \$254T	<p>Mayer, Brown &amp; Platt, Chicago; associate, 1981-86, partner, 1986-1994. Attended University of Chicago, 1973-1974; Carleton College, B.A. <i>magna cum laude</i> 1975; Harvard University, J.D. 1979. Jones, Day, Reavis &amp; Pogue, Cleveland, associate, 1979; Law Clerk, US Dist. Ct. (N.D. Ill), 1980; Asst. Attorney General, Illinois, 1981-83; advisor to American Law Institute. Special assistant to Chairman of ABA Commission on Professionalism; Salomon described a Commission report in a letter to the Wall Street Journal as "premised on the view that if the profession does not reform its own house, other bodies may do so in perhaps more extreme and less-considered ways." (Samborn 94) A former partner at Mayer, Brown &amp; Platt described Salomon as an "up-and-coming" partner and "a protégé" of firm chairman Robert Helman. (Nachman 94) Publications: <i>Countering a Move to Depose</i>, Nat. L. J. (Dec. 9, 1991) (co-author); <i>Expert Witness Rule Out for Former Employee</i>, LEADERS PRODUCTS LIABILITY (Oct. 1991) (co-author); <i>Dealing with the Turncoat Expert</i>, BNA PRODUCT LIABILITY &amp; SAFETY REPORTER (May 31, 1991) (co-author); <i>Those Damaging Punitive Damages</i>, CHICAGO TRIBUNE 25 (Apr. 20, 1989); <i>Rekindling Lawyer Professionalism</i>, 41 MERCER L. REV. 597 (1990); <i>Professionalism: Should There Be Limits on Lawyer Zeal?</i>, NAT'L L. J. (July 21, 1996); <i>Summary Judgment: A Notable Departure for the Court</i>, LEGAL TIMES 12-13 (Sept. 1, 1986) (co-author); <i>Discover from those At the Top</i>, LITIGATION MAGAZINE 15 (Summer 1987); <i>Shades of Gray and Other Myths</i>, 1 GEO. J. LEGAL ETHICS 463 (1987) (urging that there should be more instruction in ethics in professional schools, stressing the importance of "restoring ethics to its rightful place at the center of the universe of professional and educative values"); <i>A Primer on Civil RICO Issues</i>, RICO Monograph, Defense Research Institute (1988) (co-author); <i>The Rekindling of Professionalism</i>, CHICAGO LAWYER, Special Report (Nov. 1986); CIVIL RICO PRACTICE: CAUSES OF ACTION (John Wiley &amp; Sons, Inc. 1991); <i>Privilege Under Fire</i>, 10 ACCA Docket 40 (summer 1992), reprinted in N.J. LAW J. (Oct. 12, 1992); CORPORATE COUNSEL'S GUIDE: ATTORNEY CLIENT WORK PRODUCT SELF-EVALUATIVE PRIVILEGES (Dec. 1992); <i>The Privilege is Ours</i>, AMERICAN LAWYER (Dec. 31, 1991).</p>

	Name and Alleged Amt. Stolen	Educational and Professional Background, and Areas of Practice
14	Sherman F. Taub \$225T	Tenzer, Greenblatt, Fallon & Kaplan, New York, partner. Roosevelt University, B.S.B.A., 1967; New York Law School, J.D. 1971; New York University, LL.M. in Taxation, 1972. (Martindale 94)
15	Stanford D. Hess \$110T	Weinberg & Green, Baltimore, associate 1974-77, partner, 1977-1994. University of Maryland, B.A. 1964; LL.B. 1966. Sauerwein, Boyd & Decker, Baltimore, associate 1966-1969; Assistant Attorney General of Maryland, 1969-1974; Neuberger, Quinn, Geilen, Rubin & Gibber, P.A., member, 1994 to the present. Banking law. (Martindale) Outstanding Young Man of the Year, Baltimore Junior Chamber of Commerce, 1970; Army Reserves 1966-72.
16	Scott J. McKay Wolas	Hunton & Williams, partner, New York office, 1989-1995; Georgetown University School of Foreign Service, B.S.F.S. 1971; Fordham University, J.D. 1976; associate, Shearman and Sterling, 1976-1980; associate, then partner at Curtis, Mallet-Prevost, Colt & Mosle, 1980-1989. (Davis, 96a, Matindale 95)

**APPENDIX C: LAWYERS' INCOMES, ANNUAL BILLINGS,  
AND ANNUAL BILLABLE HOURS**

	Name & Alleged Amt. Stolen	Lawyers' Annual Incomes, Billings, and/or Billable Hours
1	Edward S. Digges, Jr. \$3.1M	Income: 1985: \$416,235; 1986: \$678,803; 1987: \$645,344. (Dresser) Top biller at Piper & Marbury, billed \$2.2 million between 1978 and 1982, 40% more than the second-highest biller. (Greenberg 90) 1986: billed 5,800 hours. (St. Paul) <sup>366</sup>

366. Digges was not the only person in his firm engaged in overbilling. Andrew Vernick, an associate who worked for Levin, billed 537.86 hours in one month, which is over 17 hours per day. During one four-month period, Vernick billed 24 or more hours on each of nine days. *St. Paul Ins. Co. v. Dresser Indus., Inc.*, 972 F.2d 341 (4th Cir. 1992).

	Name & Alleged Amt. Stolen	Lawyers' Annual Incomes, Billings, and/or Billable Hours
2	Harvey Myerson \$2.5M	Myerson reportedly had a "near seven-figure salary" at Finley, Kumble. (Furman 87) Prior to its demise, "about 50 of Finley, Kumble's 250 or so partners earned around \$300,000, with members on the executive committee getting between \$300,000 and \$1,000,000." (Furman 87) Myerson was firm's "rainmaker," bringing in \$23 million of firm's \$30 million in annual revenues. (Hurtado 92) Myerson & Kuhn had only one successful year before it filed for bankruptcy. (Hurtado 92)
3	Wilkes "Skip" Morgan \$2.3M	In 1992, Bronson profits per partner were approximately \$210,000.00. (Orenstein 93)
4	H. Lawrence Fox \$1.62M	Mr. Fox was a "top-billing partner." (Groner 91a) The average equity partner at Winston and Strawn earned \$400,000 in 1991. (Barker 93)
5	Maureen Walsh \$1.48M	Walsh earned \$200,000 in 1990. Walsh claims that she received only "a minor fraction of one percent of the income of the firm after all expenses." (Rooney 95)
6	William F. Duker \$1.4M	Duker was "the most highly compensated attorney at the firm, collecting from \$1 million to \$5 million a year from 1990 to 1995, the years he overbilled the government." (Walsh 97) 1996 earnings reported to be in same range. (Barrett 97)
7	William Appler \$1.1M	Starting salary at McDermott, Will & Emery was \$125,000 in 1984, the year the Appler joined the firm. Appler never gained full-equity partnership. (Murawski 94)
8	Gary Fairchild \$784T	Estimates of Fairchild's income range from \$500,000 to \$800,000 during period when the billing fraud occurred. (Greenburg, Crawford & O'Brien 94)
9	Michael X. Morrell \$500T	Annual salary at Akin, Gump of \$120,000 to \$165,000, simultaneously President of LaSalle Laboratories, US affiliate of French pharmaceutical client. (Torry 95)

	Name & Alleged Amt. Stolen	Lawyers' Annual Incomes, Billings, and/or Billable Hours
10	Webster Hubbell \$482T	Others at Rose firm reported that during his last years there, Hubbell's gross income was between \$120,000 and \$150,000. (Labaton 94b) 1992 reported taxable income was \$122,074; in fact 1992 taxable income was at least \$309,168. (Information)
11	James T. Crowley \$385T	In his last year at Thompson, Hine & Flory, Crowley "billed \$2 million worth of business and earned a salary of \$200,000.00." (McCarty 97)
12	Timothy Flato \$300-400T	One Latham lawyer estimated Flato's annual draw in 1994 at \$600,000, above the firm average. (Osborne 95) At his previous firm, Flato was responsible for annual billings of over \$3 million, and averaged over 3,000 billable hours per year. Judy Pollner, a legal recruiter, said "There are not many attorneys in the country who have established themselves [as rainmakers] at such an early age." (Newdorf 91a) At Latham, Flato brought in between \$4 million and \$6 million per year. (Mintz 96b)
13	Richard Salomon \$214T	Salomon routinely billed over 3,500 hours a year, often arriving at work between 3:00 and 4:00 a.m. (Samborn 94)
14	Sherman F. Taub \$225T	One of five top rainmakers in firm, generated billings of \$1.5 million per year. (Adams 94)
15	Stanford D. Hess \$110T	Annual billings estimated to be \$1 million per year. (Mullaney 94a) During the mid-1980s he was the highest billing lawyer at Weinberg and Green. (Bowling 95b) At his disciplinary hearing, Hess claimed never to have billed 2,000 hours. (Memorandum)
16	Scott J. McKay Wolas	Salary in the range of \$500,000. (Vorobil 96)

## APPENDIX D: PERSONAL AND FAMILY BACKGROUND OF THE LAWYERS

	Name	Personal and Family Background
1	Edward S. Digges, Jr. \$3.1M	Born 1946, Caucasian, male, Democrat, Roman Catholic, wealthy family, father was lawyer. Digges' uncle, J. Dudley Digges, <sup>367</sup> and grandfather, Walter Mitchell Digges, were justices on highest court in Maryland. Married 1969, five children. (Geyelin 89) Bought and renovated a 310-acre pre-Revolutionary war estate on Eastern shore of Md. (Groner 89) "Partners, friends . . . knew Digges as a solid family man, a tough litigator, and a star pitcher on Piper & Marbury's baseball team." (Groner 89) Digges "seemed to have no motive for crossing the line. He had everything: money, power, prestige, a potent family name, unlimited potential, a great wife, and a loving family. . . . But Digges' appetite for self-aggrandizement and validation proved to be insatiable." He worked 14 to 17 hours a day, 7 days a week. (Greenberg 90)
2	Harvey Myerson \$2.5M	Born 1939, Caucasian, male, Republican, Jewish. Married 1961, three daughters; married 1975, two daughters. Father was a wholesaler of silk and wool in Philadelphia. Myerson wore a raccoon coat, smoked big cigars, drove a Rolls Royce. (Cohen 89e) After firm collapsed, Myerson moved to Florida, (Cohen 90) where a person's home cannot be seized to satisfy debts. <sup>368</sup>
3	Wilkes "Skip" Morgan \$2.3M	Born 1946, Caucasian, male. Served in Marines in Vietnam, awarded a Silver Star Medal for his performance in one battle. (Mintz 92) Morgan had an "addiction to flying and buying expensive airplanes." (Mintz 93)

367. Digges' uncle wrote an opinion in 1974 disbaring Spiro Agnew for criminal conduct. Maryland State Barr Ass'n, Inc. v. Agnew, 318 A.2d 811 (Md. Ct. App. 1974).

368. Fl. Const. Art. 10, section 4.

	Name	Personal and Family Background
4	H. Lawrence Fox \$1.62M	Born 1939, Caucasian, male. Described by colleagues as bullheaded, egotistical, argumentative, used crude language. One client said "He had a damn good reputation as a tough-as-nails negotiator." A former colleague said "He accomplished what he wanted by bullying and horse-trading. . . . He always had an angle." Another said Fox "would always get into arguments in what was supposed to be a friendly game of basketball." (Groner 91a)
5	Maureen Walsh \$1.48M	Born 1955. Caucasian, female. Debutante from wealthy Omaha family, youngest of five daughters. Father was president of the Nebraska Association of Trial Attorneys. (Triedman 95) He died when she was in high school; her mother then married a multi-millionaire who owned a chain of discount stores; (Rooney 96b) family moved to a mansion with 52 rooms, bowling alley, movie theater, and two swimming pools. (Goldberg 94) A law school classmate described Walsh as tall, blonde and stately, with "beautiful clothes, beautiful jewelry, and a really nice apartment." (Goldberg 94) Before the billing fraud was discovered, Walsh was sued several times because of bills she had not paid. Among these were claims brought by a bank, two clothing stores and two landlords. The federal government filed a lien against a condo she owned to collect about \$8,000 in unpaid taxes. (Goldberg 94, Duncan and Chanen 94)
6	William F. Duker \$1.4M	Born 1954 in Albany, New York. Caucasian, male. (Matindale 97) Michael Ross, lawyer at firm, said Duker was "hard-working, smart lawyer and a good family man." (Walsh 97)
7	William Appler \$1.1M	Born 1941. Caucasian, male. Father was an FBI agent. Collected wine, stored over 900 bottles at firm; meticulously inventoried his wine by year, place and harvest. Collected ceramics, went on shopping sprees in which he spent \$120,000 on wine, and \$40,000 on ceramics. Two marriages, extramarital affair during the second with an employee of a client company. Appler represented the employee personally against employer. This led to a conflict of interest charge. (Murawski 94)

	Name	Personal and Family Background
8	Gary Fairchild \$784T	Born 1943. Caucasian, male, Republican, Episcopalian. Married 1970, one child, divorced 1982. Married Maureen Walsh 1984, two children. From middle-class family in Johnstown, Pennsylvania. Raised as an observant Presbyterian, later became Episcopalian. Head of College Republicans at Wheaton College, later became national chairman. Classmate described him as a "Goldwater conservative." Served as captain in Vietnam after law school. (Goldberg 94) Director of Chicago chapter of Boy Scouts of America. Had largest collection of suspenders of any lawyer in Chicago. (Margolick 94)
9	Michael X. Morrell \$500T	Born 1943, Caucasian, male. (Martindale 89) Married, served on Georgetown Board of Regents, member of Board of Directors of Kennedy Center. (Torry 95)
10	Webster Hubbell \$482T	Born 1948, Caucasian, male, Democrat, 6'5", 290 pounds. Married Suzanna Ward, daughter of millionaire Seth Ward 1971. Four children. College football star. Father was engineer who established construction company in Little Rock. Undergraduate degree in electrical engineering. Leader of Boys' Club in Little Rock. Law school classmate James Pitts, now at Winston & Strawn, said "He was a painfully honest person. . . . We had some guys in law school you could say, 'That guy cuts corners, he's going to get into trouble.' That wasn't Webb. He was straight, very straight, a good guy and a hard worker." (Eisler 95)  Hubbell did not have an extravagant lifestyle. During his confirmation hearings it was disclosed that he had debts of at least \$176,000 plus a \$400,000 mortgage. He "wore rumpled suits and took the subway to work in Washington," and "he routinely had no cash and would borrow change." (Labaton 94b)
11	James T. Crowley \$385T	Born 1943, Caucasian, male. Married, two children. (Who's Who 94-95) Crowley separated from his wife in early 1997. Later that year he committed suicide. (McCarty 97)



	Name	Personal and Family Background
12	Timothy Flato \$300-400T	<p>Born 1953, Caucasian, male, married, three children. "A handsome former basketball star and high school valedictorian who married his college sweetheart and bringing home an epic lawyer's salary." (Mintz 96b) Coached children's basketball and soccer teams. (Mintz 96b) One former Latham associate, upon learning of charges of billing fraud and resignation, said he was "a hard-charging lawyer, a loving father of three, a 'great, great guy' who was kind and generous to associates and staff. If he did anything unethical, the lawyer said, 'that would surprise me.' " (Steuart 95a)</p> <p>Early in career, a journalist described Flato: "Intense and obsessed, with an air of self-importance, [Timothy] Flato is one of Orrick's most prolific performers. . . . In the last five years he has turned the firm's fledgling project finance practice into a top money-maker. . . . [Orrick partner Mark] Levie says Flato's compensation has risen faster and farther than that of any lawyer his age in the history of the firm. . . . [Flato] often jokes about leaving the law. . . . "Maybe I'll just give up being a lawyer and be a short-order cook," he says. (Prophecy 96)</p>
13	Richard Salomon \$254T	Born 1953, Caucasian, male, Jewish, married 1988, two children. (Who's Who) Enjoyed philately, tennis, photography, piano. Speaks French and German. (Martindale 93)
14	Sherman F. Taub \$225T	Born 1944. (Martindale 94) Caucasian, male.
15	Stanford D. Hess \$110T	Born 1943, Caucasian, male, Democrat, Jewish. Married 1965, three children; married a second time 1991.

	Name	Personal and Family Background
16	Scott J. McKay Wolas	Born 1949, (Martindale 95) Caucasian, male. Two marriages, both ended in divorce, each resulted in the birth of one son. (Vorobil 96) Wolas' father operated Great Eastern Liquors, one of the largest US retail liquor outlets. (Meier 96) "Disheveled, portly, a pit-bull litigator" who "took long lunches . . . and came back with a glazed look." (Davis 96a) Collector of antique toy soldiers, which he took with him into hiding. (Vorobil 96) Wrote 500-page spy novel while in hiding. (Davis 96b)

#### APPENDIX E: EXPLANATIONS RELATING TO MENTAL HEALTH<sup>369</sup>

	Name & Alleged Amt. Stolen	Mental Health Information Offered by the Lawyers in Connection with their Billing Fraud
1.	Edward S. Digges, Jr. \$3.1M	"Digges' colleagues and friends are certain this is not the story of a lawyer who became impaired by drugs, alcohol or mental illness." (Groner 89) However, a psychiatrist testified at the sentencing hearing in the criminal proceeding that Digges suffers from a "narcissistic personality disorder" that made him unable to comprehend the magnitude of his crime." (Legal 90)
2	Harvey Myerson \$2.5M	Myerson stated that he was "crazed" when his ex-wife sued for divorce and custody. He said he was "possessed in some way to stop this woman." (Hurtado 92b)
3	Wilkes "Skip" Morgan \$2.3M	Morgan served in Marines in Vietnam, claimed that billing fraud was a product of post-traumatic stress disorder. Requested lower prison sentence. Morgan's lawyer described Morgan as "the anguished soldier trying to suppress his memories of horrific Vietnam combat." (Mintz 92) Managing partner of Bronson firm said Morgan seemed "to be functioning fine as a lawyer" and there was no apparent mental illness. (Mintz 92)

369. In cases in which mental health information was not available, the lawyers' names are omitted from the table.

	Name & Alleged Amt. Stolen	Mental Health Information Offered by the Lawyers in Connection with their Billing Fraud
5	Maureen Walsh \$1.48M	At time billing fraud was discovered Walsh was taking Prednisone to control asthma, and an anti-anxiety drug called Xanax. One psychiatrist from Tennessee said Walsh's memory and professional judgment were adversely affected by combination of medications, and by mental disorders. (Bar Talk 97) Psychiatrist said she "developed a mixed manic-depressive state which impaired her judgment and capacity for self-restraint." (Rooney 96c) She was said to be suffering from bipolar illness, mania, and depression, and to have been given medication that was not appropriate. Psychiatric report said "it is likely that both bipolar illness and drug-induced mood disorder . . . contributed to the overall dysfunction experienced by Ms. [Walsh] during the period of 1991-1994." (Bar Talk 97) Walsh's lawyer submitted medical reports alleging that Prednisone could cause hypermania, loss of ability to perceive time, and delusions of grandeur. (Stephens 97a) Asst. US Atty. Conway said Walsh's billing fraud was caused by ambition and greed. "We don't believe that any of the medications contributed at all to her crimes." (Gillis 97) After indictment Walsh indicated intention to present insanity defense, but ultimately made an Alford <sup>370</sup> plea. (Rooney 96c) Sentencing judge noted that Walsh should receive reduced sentence because "she suffered from a diminished mental capacity." (Jackson 97)
6	William F. Duker \$1.4M	Duker's 33-month prison sentence to be followed by 2 years of supervised release conditioned on participation in alcohol abuse program, and if necessary, a mental health program. (Ethics Log)

370. An *Alford* plea is one in which the defendant does not admit guilt but concedes that the prosecutor could prove the charges against him or her. See *North Carolina v. Alford*, 400 U.S. 25, 35-37 (1970) (holding that appellate court erred in finding that guilty plea, made to avoid death penalty, was invalid).

	Name & Alleged Amt. Stolen	Mental Health Information Offered by the Lawyers in Connection with their Billing Fraud
7	William Appler \$1.1M	Diagnosed 1983 with manic-depressive illness (bipolar disorder), <sup>371</sup> took lithium and received psychotherapy for 1½ years; (Murawski 94) alcohol abuse and narcissistic personality disorder diagnosed 1991 (both said to be caused by bipolar disorder); at that time Appler began taking lithium again. Unsuccessfully argued that his disbarment violated Americans With Disabilities Act. (Shesgreen)
10	Webster Hubbell . \$482T	Hubbell recently stated that instead of downscaling his life and getting his finances in order, he kept using more and more credit cards until finally he started overbilling clients to cover his credit card expenses. He said that overspending “can be like alcoholism” in that it is a “self-defeating compulsion that he couldn’t or wouldn’t stop.” (Ahrens 97)

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371. Writing about the Appler case, journalist John Murawski explained: “According to the Diagnostic and Statistical Manual of Mental Disorders, . . . the manic phase is characterized by inflated and uncritical self-esteem, decreased need for sleep, excessive planning, buying sprees, foolish business investments, sexual indiscretions, and flamboyant behavior. In the manic phase, a person lacks clarity of judgment.” But, Murawski explained, some observed that Appler’s stealing was “premeditated and meticulous.” He quoted Assistant Bar Counsel Julia Porter’s brief as urging that Appler’s “secret, improper billing of clients was not a spur-of-the-moment, impulsive gesture, showing poor judgment.” Murawski, *supra* note 143, at 1.

	Name & Alleged Amt. Stolen	Mental Health Information Offered by the Lawyers in Connection with their Billing Fraud
12	Timothy Flato \$300-400T	Flato submitted reports from two mental health professionals. One, therapist Steven Walsh, said "The most striking aspect of Mr. Flato's situation is the degree of disturbance and dissatisfaction that accompanied what would appear to be an extremely successful life. . . . Mr. Flato was depressed and anxious, torn between his work and family, ever redoubling his efforts, and feeling that he was failing on both fronts. [He] developed a magical, distorted belief that, in some unspecifiable way, stealing would relieve his depression." (Mintz 96b) The other, psychologist Daniel Goldstine, wrote "Here was a man compulsively exercising, compulsively overworking, compulsively fathering and at the same time doing an extremely sloppy job of embezzling." (Mintz 96b) Prosecutor Anne Kenner objected to Flato's plea for lenient sentence because theft was the product of stress that resulted in diminished capacity. "Far from experiencing an 'impairment of the intellect,' Flato was practicing at the top of his profession, facilitating highly complex financial transactions in the technically challenging field of alternative energy." (Mintz 96c)
13	Richard Salomon \$254T	A psychological evaluation produced a diagnosis of "obsessive-compulsive personality disorder," which Robert Cummins, Salomon's lawyer, said "drove him to seek perfection in all things. This was compounded by the pressures that exist in the 'big law firm.' " (Nachman 94) When Salomon was placed on leave from firm, his lawyer said that he would return if he was cleared of disciplinary charges. He said Salomon's doctors had recommended that he return to practice as a component of his therapy. (Nachman 94)

**APPENDIX F: THE LAWYERS' COMMENTS WHEN CONFRONTED WITH ALLEGATIONS**

	Name and Alleged Amt. Stolen	Statements by the Accused Lawyers and Their Counsel Responding to the Billing Fraud Allegations
1	Edward S. Digges, Jr. \$3.1M	Admitted that he stole nearly \$800,000 from his partners, whom he referred to as "parasites," because he felt they benefited financially from his hard work. He said "It was wrong, what I did to my partners, . . . regardless of how I rationalized it." (Greenberg 90) Though he admitted overbilling Dresser (his client) by \$2.2 million as a condition of his plea bargain, in a subsequent interview Digges claimed there was no overbilling, but only a gross misunderstanding about method by which he billed. Listed hours were a reflection of quality of service. He was doing "value billing." At sentencing hearing Digges said "I do recognize that I've made some mistakes in my conduct, and I'm truly sorry." (Greenberg 90)
2	Harvey Myerson \$2.5M	In October 1989, before firm collapsed, Myerson said firm was suffering a "cash crunch," but he predicted that it would soon become "more profitable" than ever. (Cohen 90) He said of the charges: "This is a set-up. . . . Harvey Myerson was too uppity. . . . It means being a flamboyant and big cigar-smoking Jewish lawyer who made it, and he flaunted it. I did get uppity and that was one of my failures." (Hurtado 92) Myerson said contract with Shearson did not require lawyers actually to work hours they billed for. He explained his tax evasion as designed "to hide assets from his ex-wife who had falsely induced him into a 'sexless marriage' and was suing him for more alimony." (Jensen 92b)  Charles Stillman, Myerson's lawyer, said before indictment was issued: "When people finally sort through all of the facts and circumstances, it will be clear that Harvey Myerson did not violate the criminal law." (Jensen 92b) During criminal trial, Myerson claimed that other lawyers in his firm engaged in overbilling without his knowledge, and that money he was accused of having stolen from his partners was merely an advance which he planned to repay. (Moses & Schmitt 92)

	Name and Alleged Amt. Stolen	Statements by the Accused Lawyers and Their Counsel Responding to the Billing Fraud Allegations
3	Wilkes "Skip" Morgan \$2.3M	When confronted with allegations of misconduct, Morgan confessed to everything and immediately volunteered to turn over all his assets to the Bronson firm. (Osborne 92) In an interview with government's psychiatrist in criminal proceeding, Morgan said, "Before I dreamed up the schemes [to embezzle], I saw a lot of things, a lot of abuse by others [in the firm], and I think this opened a window . . . The embezzlements began to feed my flying habit." (Mintz 93)
4	H. Lawrence Fox \$1.62M	During hearing on his plea agreement Fox described his misconduct: "I used the system of billing clients for personal gain. . . . Some of that gain I reported as income, and some I did not." (Groner 91b) At the sentencing hearing, Fox said (in part): "I would never be able to come up with the right words for remorse. . . . When you're caught, everybody always says they're sorry." "Since this has unfolded . . . I have tried to do everything I could to preserve assets, to help the victims. . . . I have continued to work at writing and hope to sell products and clearly had never ever not considered that if I were fortunate one more time in my life, that I wouldn't attempt to see there was total equity. I can't run, and I don't want to run." (Ex-Lawyer 92)

	Name and Alleged Amt. Stolen	Statements by the Accused Lawyers and Their Counsel Responding to the Billing Fraud Allegations
5	Maureen Walsh \$1.48M	<p>In 1994 when Gary Fairchild's misconduct was exposed, Walsh's lawyer, Michael Pope, asserted that his client had not engaged in misconduct: "This isn't a husband and wife story. It's a husband story" (Triedman 95) In responding to the disciplinary complaint, Walsh (through counsel) "denied that there was any impropriety in [certain] billings. . . . It was Chapman policy to encourage billing above the multiple of the hours involved, so as to take into account the factors other than time found in Rule 1.5 of the Rules of Professional Responsibility (sic). Chapman did not, in general, bill its clients solely on the basis of time, and Respondent followed the policies of her firm." (Walsh Answer to ARDC Complaint at 3-4)<sup>372</sup></p> <p>Accused of crediting payments to other clients than those who had paid bills, Walsh explained that "it was common to allow variance premiums to be applied to uncollected amounts so that a write-off of time could be avoided." (Id. at 4) As to certain false billings, Walsh said she "did not always label her time slips with file numbers, and believe[s] attribution errors occurred." (Id. at 10) Accused of altering time records to include services not rendered, she responded, "it was not uncommon at Chapman for an attorney to revise or edit a time bill to reflect the value of the services rendered and memory of work done and not recorded. The purpose of a Chapman bill was not to reflect time, but to reflect the value of the service rendered." (Id. at 20)</p>
6	William F. Duker \$1.4M	After Duker pleaded guilty to criminal charges his attorney, Gerald Shargel said his client was remorseful and accepted responsibility for his conduct. (Duker Pleads 97)
7	William Ap- pler <sup>373</sup> \$1.1M	Appler's attorney blamed Appler's conduct on his manic depressive disorder. He noted that after the misconduct and before his disbarment, Appler practiced law for 4 years without incident and was effectively treated with medication. (Ponce 96)

372. This might be denominated the "wrapping oneself in the rules" defense.

373. Assistant Bar Counsel Porter reportedly said Mr. Appler probably "began and continued stealing money from his firm [because] he was repeatedly passed over for full-equity partnership." Murawski, *supra* note 143, at 1.



	Name and Alleged Amt. Stolen	Statements by the Accused Lawyers and Their Counsel Responding to the Billing Fraud Allegations
8	Gary Fairchild \$784T	Fairchild's lawyer said his client admitted his misconduct, but, he said, "Gary has no information whatsoever regarding any misconduct on the part of his wife." (Stevens 94c) Another Fairchild lawyer, explained his client's request for voluntary disbarment: "Gary well understood that under the situation he shouldn't remain a member of the bar, and he wanted to make this as painless and non-controversial as possible." (Duncan 94c) When he pled guilty to criminal charges, Fairchild said "What I did was wrong, terribly wrong. . . . I've disgraced my profession, betrayed my former law firm, irreparably harmed my family and destroyed my life." (O'Connor 95)
9	Michael X. Morrell \$500T	Morrell's lawyer stated in response to disciplinary charges that his client "committed no fraud, no misappropriation — none of the serious violations" that had been alleged. (Torry 95)
10	Webster Hubbell \$482T	Upon resignation from his position as Associate Attorney General of the US, Hubbell said "It is with deep regret that I have seen private issues between me and my family and my former law firm elevated to public speculation. . . . From time to time law firms and departing partners have lingering discussions and even disputes over compensation and reimbursement matters; the Rose Law Firm and I are having such discussions now. I am confident that at the conclusion of these discussions all outstanding matters will be resolved satisfactorily." (Isikoff 94) He said "I did not overbill the RTC or any other clients," (McLachlan & Berkman 94) The plea agreement states that "defendant admits that he did, in fact, devise a scheme to defraud as described in Count One of the Information." (Plea Agreement at 2) Hubbell said "I want this court to know that I take full responsibility for my actions and accept the full and complete consequences for them, which are substantial. . . . I hope that by pleading guilty I've taken the first step of easing my friends and family's pain, and only hope it will justify restoring their faith in me." (Labaton 94a)
11	James T. Crowley \$385T	"I realize I made a terrible mistake. Whatever you do to me, it's not going to be worse than what I've done to myself over the past year." (Solov 93a) Crowley said he wanted to pay back the money he had taken and to continue practicing law. "It's how I identify myself," said Crowley. "Law is my life." (Solov 93a)

	Name and Alleged Amt. Stolen	Statements by the Accused Lawyers and Their Counsel Responding to the Billing Fraud Allegations
12	Timothy Flato \$300-400T	Flato described himself as addicted to expense padding. "I would swear to myself never to do it again," he said. "I felt hooked." (Mintz 96b)
13	Richard Salomon \$214T	Salomon's lawyer said his client was driven "to seek perfection in all things," and this "was compounded by the pressures that exist in the big law firm." (Nachman 94)
14	Sherman F. Taub \$225T	Taub said he resigned from Tenzer "to develop other business interests, and as a result of certain disagreements with the firm." He declined to explain further to a reporter who asked. (Adams 94)
15	Stanford D. Hess \$110T	Hess said the bank always paid its bills late and that the time inflation scheme was an attempt to secure fees that were owing. "It was an attempt to get even. . . . We were always in the economic position of being behind the eight ball, of having huge amounts of fees owed and trying to get them back. . . . We deceived [Berman] into believing that he had a discount. . . . I regret that I didn't tell them. I regret that we did it." (James 95b) Berman, CEO of the client bank, testified that when Hess told him about the overbilling scheme, "[h]e looked up at me and said, 'Malcolm, I've done something bad and I need to tell you about it. . . . I overbilled [the bank] by \$20,000.' " Later, he said Hess "pulled out a hankie and wiped away the tears." (James 95b)
16	Scott J. McKay Wolas	Wolas reportedly called his father after he disappeared and stated that he would never be caught and even if he was caught, nothing could be proven. (Vorobil 96)

#### APPENDIX G: DISCIPLINARY RULES ALLEGED TO HAVE BEEN VIOLATED

Appendix G identifies the disciplinary rules alleged, admitted, or proven to have been violated by the lawyers. The most common alleged violations are listed at the top; the less common allegations are explained in footnotes. The rule numbers on the table refer to a substantive category of rule (e.g. unreasonable fees) and should be read to include the equivalent rule (if there is one) in the *Model Rules* numbering system or the *Model Code*.

	Name & Alleged Amt. Stolen	1.5 Fees <sup>374</sup>	8.4(c) Deceit <sup>375</sup>	1-102 (A)(3) Disrepute <sup>376</sup>	8.4 (b) Criminal Act <sup>377</sup>	Other Charges
1	Edward S. Digges, Jr. \$3.1M		X		X	
2	Harvey Myerson \$2.5M					378
3	Wilkes "Skip" Morgan \$2.3M					379
4	H. Lawrence Fox \$1.62M					380
5	Maureen Walsh \$1.48M	X	X	X		381
6	William F. Duker \$1.4M					382
7	William Appler \$1.1M		X	X	X	383

374. Collecting an unreasonable fee, or the model code equivalent, charging an excessive fee.

375. Conduct involving dishonesty, fraud, deceit or misrepresentation.

376. Engaging in illegal conduct involving moral turpitude that adversely reflects on his fitness to practice law.

377. Committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

378. Myerson was charged with violating Judiciary Law 90(4)(b), which provides for automatic disbarment upon conviction of a federal felony that also would constitute a felony under New York law. The New York Appellate Division found, however, that the federal crimes for which Myerson was charged were not "'essentially similar' . . . to acts which are defined as a felony [in New York]." *In re Myerson*, 182 A.D. 2d 242 (N.Y. App. Div. 1992). As a result, Myerson was found to have committed "serious crimes" within the meaning of Judiciary Law 90(4)(d) for conduct that is not felonious in New York. He was suspended pending a hearing on sanctions. *Id.* at 143.

379. Morgan resigned from the California bar after he was criminally charged.

380. Fox was charged under D.C. Code 11-2503(a), which imposes automatic disbarment for conduct involving moral turpitude per se. *See In re Fox*, 627 A.2d 511 (D.C. 1993).

381. Walsh also was charged with violation of Ill. Supreme Court Rule 771 (conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute), and with violation of the counterpart rules that preceded the adoption of the Illinois Rules of Professional Conduct. *In re Walsh*, No. 312973, Complaint Before Hearing Board of Illinois ARDC (filed Oct. 13, 1994).

382. Duker was charged with violating Judiciary Laws 90(4)(a) and 90(4)(b) which provide for automatic disbarment upon pleading guilty to a federal felony. *In re Duker*, 242 A.D.2d 853, 853-854 (N.Y. App. Div. 1997).

383. Appler was also charged with violating Rule 1.7(b)(1) (representing two clients whose interests conflict) and DR 1-102(A)(3) (engaging in illegal conduct involving moral turpitude that adversely reflects on fitness to practice law). *In re Appler*, 669 A.2d 731, 732 (D.C. Ct. App. 1995).

	Name & Alleged Amt. Stolen	1.5 Fees <sup>374</sup>	8.4(c) Deceit <sup>375</sup>	1-102 (A)(3) Disrepute <sup>376</sup>	8.4 (b) Criminal Act <sup>377</sup>	Other Charges
8	Gary Fairchild \$784T		X			384
9	Michael X. Morell \$500T		X	X		385
10	Webster Hubbell \$482T				X <sup>386</sup>	387
11	James T. Crowley \$385T		X	X		
12	Timothy Flato \$300-400T					388
13	Richard Salomon \$254T	X	X			389
14	Sherman F. Taub \$225T		X			390
15	Stanford D. Hess \$110T	X	X	X	X	391

384. Fairchild was charged with violation of Illinois Rules 1.7(a) (for assisting his wife in matters adverse to his obligations to the firm), breach of fiduciary duty, and Illinois Supreme Court Rule 771 (conduct that harms the administration of justice or brings disrepute to the legal profession). *In re Fairchild*, No. 94CH607, Statement of Charges (Ill. 1994).

385. Morrell was charged with violating DR 9-102(A) (misappropriation of client funds), and 9-102(B) (failing to keep complete records and to account for client funds). *In re Morrell*, No. 348-92 (D.C. 1995).

386. See ARK. MODEL RULES OF PROFESSIONAL CONDUCT Rule 8.4(b) (1997) (defining professional misconduct as the commission of "a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects."); see *id.* 6(B)(1) ("When a complaint against an attorney is based on a conviction of a felony or a crime which also violates Rule 8.4(b) of the *Model Rules*, the Committee shall institute an action of disbarment."). Webster Hubbell may have consented to his disbarment in light of this rule.

387. Crowley also was found to have violated *Model Code* DR 1-102(A)(6), which states, "a lawyer shall not engage in any conduct that adversely reflects on fitness to practice law." Office of Disciplinary Counsel v. Crowley, 634 N.E.2d 1008 (Ohio 1994).

388. Flato resigned from the California bar after criminal charges were filed against him. *In re Flato*, No. 96-Q-02268 (Cal. 1996).

389. Salomon also was charged with violation of ILL. COMP. STAT. ANN. RPC Rule 7.1 (West 1990) (engaging in false or misleading communication about himself" with reference to his credential fraud). *In re Salomon*, MR 10420 (Ill., Sept. 23, 1994).

390. Taub also was charged with violation of N.Y. *CLS Code of Prof. Respons.* DR 1-102(a)(7) (now DR 1-102(a)(8)) which prohibits a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law. *In re Taub*, H.P. No. 34195, Notice of Charges (N.Y. Sup. Ct. 1 Dept. 1996).

391. Hess also was charged with violation of *Model Code* DR-2-106 which prohibits a lawyer from charging

	Name & Alleged Amt. Stolen	1.5 Fees <sup>374</sup>	8.4(c) Deceit <sup>375</sup>	1-102 (A)(3) Disrepute <sup>376</sup>	8.4 (b) Criminal Act <sup>377</sup>	Other Charges
16	Scott J. McKay Wolas					392

**APPENDIX H: DISCOVERY OF BILLING FRAUD**

	Name & Alleged Amt. Stolen	How the Billing Fraud Was Discovered
1	Edward S. Digges, Jr. \$3.1M	Laurie Atkinson, a firm secretary, found a bill on her computer screen in spring 1988 that included time erroneously billed under her name and those of other secretaries. She told partner Michael Wharton, who confronted Digges about phony hours that had been billed under his name. (Greenberg 90) Soon after that Digges' principal client's in-house counsel noticed that the company was paying Digges' firm three times what it was paying other firms that were doing more work. (Groner 89) The client filed suit for malpractice.
2	Harvey Myerson \$2.5M	New comptroller at Webster & Sheffield discovered in 1979 that Myerson had altered receipts for expenses submitted for reimbursement. The firm audited Myerson's expenses for 1977 and 1978 and found \$120,000 of expense fraud. The managing partner, William H. Hogeland, Jr., then had a "Dutch Uncle type-talk" with Myerson, and made him repay those expenses.

or collecting an "illegal or clearly excessive fee" and *Model Rule* 1.8 (h), which prohibits a lawyer from contracting with a client to limit the lawyer's liability for malpractice unless the client is permitted by law and the client is independently represented in making the agreement. Attorney Grievance Comm'n v. Hess, Misc. Docket No. AG-55-97 (Md. Ct. App. 1997).

392. Wolas was suspended from the practice of law based on his willful failure to cooperate with the disciplinary committee. *Disciplinary Proceedings*, N.Y. L. J., Nov. 3, 1997, at 4.

	Name & Alleged Amt. Stolen	How the Billing Fraud Was Discovered
		In 1983 a client of Myerson's, Allegheny Beverage Co., complained of overbilling. They had paid \$4 million in fees during the last two years. Myerson dismissed the complaint as a client's effort to avoid paying a bill. Accepting this explanation, the firm wrote off close to \$1 million in billable time. (Jensen 92a, 92b) When Myerson came to Finley Kumble in 1984, Steven Kumble learned that Myerson's gross income was the same amount as his annual interest payments on loans made to purchase his five houses. Nothing was done about it. (Jensen 92b) In 1989, some former Myerson & Kuhn lawyers gave evidence to Shearson Lehman, a client, that the firm was overbilling Shearson. (Cohen 89b)
3	Wilkes "Skip" Morgan \$2.3M	In 1991, Bronson's accounting office reported a build-up of unbilled time and expenses. (Osborne 92).
4	H. Lawrence Fox \$1.62M	J. Michael McGarry III, managing partner of the DC office of Winston & Strawn, said the firm learned of Fox's billing fraud from a "credible source" who had gotten the information from someone in the firm who was close to Fox. (Groner 91a)
5	Maureen Walsh \$1.48M	An associate who worked for Walsh complained that she had asked him to make false representations on his time sheets. (Goldberg 94)
6	William F. Duker \$1.4M	FDIC's inspector general began an audit of bills from Duker's firm. (Walsh 97) The billing fraud was uncovered after auditors became suspicious when Duker began resisting requests for handwritten time sheets and other records. (Barrett 97)
7	William Appler \$1.1M	A secretary noticed that Appler had not credited a client for an airline ticket that he had not used. She reported this to some partners, who investigated. A month later the firm learned that Appler was billing one client directly. (Re Appler)
8	Gary Fairchild \$784M	Lawyers at Chapman & Cutler reported mishandling of funds involving Maureen Walsh and Fairchild to Winston & Strawn. (Gibson and Gratteau 94)

	Name & Alleged Amt. Stolen	How the Billing Fraud Was Discovered
9	Michael X. Morrell \$500M	Morrell was President of LaSalle Corp. while he practiced law at Akin, Gump. In 1990 a LaSalle employee blew the whistle on Morrell's misconduct after Morrell failed to obtain FDA approval to market a drug for LaSalle. LaSalle officers advised Akin, Gump of Morrell's actions. (Torry 95)
10	Webster Hubbell \$482M	Hubbell's father-in-law Seth Ward permanently injured his back while fixing the Hubbells' window. Soon after that Hubbell took on a major piece of litigation for Ward under a contingent fee arrangement and promised that the Rose firm would pay all litigation expenses. Hubbell's mother died during this litigation. Hubbell lost the case. Then a consulting firm sued Hubbell and the firm for about \$123,000 claimed to be owed for work on the case. When Hubbell's partners discovered the fee and expense agreement between Hubbell and Ward, they were furious. They then began to examine Hubbell's billing practices. (Eisler 95)
11	James T. Crowley \$385M	Problems discovered during an internal investigation at the firm. (Thompson 94)
12	Timothy Flato \$300-400T	A billing partner noticed that Flato had requested that a trip be billed to a certain client. (Osborne 95)
13	Richard Salomon \$254T	Lawyers at Mayer, Brown & Platt discovered that Salomon had falsely listed his JD as <i>magna cum laude</i> . This led to investigation of Salomon's conduct, which turned up the billing fraud. (Nachman 94)
14	Sherman F. Taub \$225T	No information available.

	Name & Alleged Amt. Stolen	How the Billing Fraud Was Discovered
15	Stanford D. Hess \$110T	A Weinberg lawyer, Judith O'Neill, submitted a fee petition on one Fairfax matter. The court requested documentation of hours billed. O'Neill then withdrew the petition, because the documents would have disclosed Hess' fee inflation scheme. She then reported the scheme to James Carbine, head of the litigation dept. He ordered cessation of the system and began an investigation. (Bowling 95c) The judge in the malpractice case noted that O'Neill claimed not to know of the billing scheme until she reviewed pre-bills after the petition had been submitted. She noted also that two paralegals testified that O'Neill instructed them that in preparing the fee petition, they should ignore any billing irregularities they noticed. (Berkman 95b)
16	Scott J. McKay Wolas	Beginning in 1991, first one and then two associates began to raise concerns with Wolas and with other partners that Wolas was billing clients for a great deal of work that he was not doing. (Davis 97)

#### APPENDIX I: INVESTIGATION AND REPORTING BY THE LAW FIRMS

	Name and Alleged Amt. Stolen	Firm Investigation and Reporting of Billing Fraud to Prosecutors and Disciplinary Agencies
1	Edward S. Digges, Jr. \$3.1M	Upon receiving notice of the malpractice lawsuit by Digges' client, Digges' partners sought to inspect the firm's books. (Geyelin 89)
2	Harvey Myerson \$2.5M	Some former Myerson & Kuhn lawyers made an anonymous report of alleged overbilling to the New York lawyer disciplinary agency. (Cohen 89b)
3	Wilkes "Skip" Morgan \$2.3M	A query from the firm accounting office led to an investigation by the firm's revenue and expense committee, which revealed more billing irregularities. The management committee confronted Morgan, who immediately confessed to billing fraud. (Osborne 92)



	Name and Alleged Amt. Stolen	Firm Investigation and Reporting of Billing Fraud to Prosecutors and Disciplinary Agencies
4	H. Lawrence Fox \$1.62M	After a report of misconduct by a firm employee, Gary Fairchild, the managing partner of Winston & Strawn, started an investigation. (Groner 91a) The firm reported Fox's conduct to the DC Bar and the U.S. Attorney. (Groner 91a)
5	Maureen Walsh \$1.48M	An associate's report led to an investigation of her billing practices, which culminated in a search of all her files, and a 3½ hour interview of Walsh. Chapman & Cutler hired another firm to investigate further. Lawyers at Chapman reported Walsh's mishandling of funds to Winston & Strawn, which had contracted some work to Walsh. Gary Fairchild, the managing partner, then started an investigation. (Goldberg 94) Both firms reported Walsh's conduct to state and federal authorities. (Stevens 94a & 94b)
6	William F. Duker \$1.4M	A federal government auditor suspected that Duker had instructed his secretary to destroy or alter time sheets. Federal prosecutors obtained her cooperation in exchange for immunity from prosecution. (Barrett 97)
7	William Appler \$1.1M	Appler turned himself in to the bar upon advice of counsel after the firm told him that it would report his misconduct to the bar. (Murawski 94, Re Appler)
8	Gary Fairchild \$784T	Winston & Strawn had decided to report Fairchild's misconduct to the disciplinary agency, but Fairchild reported himself instead. The firm also reported the matter to county and federal prosecutors (Dillon 94)
9	Michael X. Morrell \$500T	After learning of Morrell's misconduct from his client, Akin, Gump fired Morrell (Torry 95) The firm reported Morrell's conduct to disciplinary authorities 23 months later. Managing partner Laurence Hoffman said that the firm did not "have all the facts" and waited to file a complaint until it had a "complete understanding" of the situation. (Torry 95)

	Name and Alleged Amt. Stolen	Firm Investigation and Reporting of Billing Fraud to Prosecutors and Disciplinary Agencies
10	Webster Hubbell \$482T	When Hubbell left the Rose firm to go to Washington, his partners had questions about his expenses and kept asking him for relevant records. Hubbell repeatedly said he would provide these documents, but he did not do so. (Labaton 94b) The Rose firm reported Hubbell's expense and billing fraud to Arkansas disciplinary authorities after attempts to reach a settlement with Hubbell failed.
11	James T. Crowley \$385T	Crowley's misconduct was reported by the firm to the Ohio disciplinary authorities. (Myers 92a)
12	Timothy Flato \$300-400T	Latham & Watkins began to investigate Flato's conduct in late November '94 and confronted him in January '95. Flato was asked to resign, which he did, admitting that he had submitted false expense reports. (Maley 95) Managing partner Robert Dell notified the US Attorney of Flato's conduct. The US Attorney said that the fact that Flato had promised to pay back the money he took did not mean that he would not be prosecuted. (Steuart 95b) <sup>393</sup>
13	Richard Salomon \$254T	Other members of Mayer, Brown & Platt reported to disciplinary authorities that Salomon had erroneously represented his Harvard JD to be <i>magna cum laude</i> . Then the firm conducted an internal investigation that turned up over \$200,000 of billing fraud, which the firm also reported to the bar. (Finkel 94, Nachman 94)
14	Sherman F. Taub \$225T	Tenzer, Greenblatt reported the matter to the disciplinary agency in New York. (Adams 94)

393. Robert Dell, managing partner of Latham & Watkins, said that he did not recall why the report was made to federal rather than to state prosecutors, but, he said, "we felt an obligation to advise someone, and we do deal with federal courts more often." Victoria Slind-Flor, *Latham & Watkins Partner Pleads Guilty*, NAT'L L.J., May 13, 1996, at A4.

	Name and Alleged Amt. Stolen	Firm Investigation and Reporting of Billing Fraud to Prosecutors and Disciplinary Agencies
15	Stanford D. Hess \$110T	The billing inflation scheme became an issue because of a pending claim for attorneys fees in litigation between the client and its borrowers. (Answer to Petition) Weinberg & Green partners reportedly met several in 1987 to discuss how to proceed. <sup>394</sup> Howse, former executive director of the law firm, described these deliberations. "There were partners who said it's not illegal or unethical and it doesn't have to be paid back. . . . Others . . . said it should be paid back regardless of whether it's legal or not, and . . . others . . . said it was illegal and has to be paid back." (James 95a) Hess reported the billing scheme to the client. (Answer to Petition)
16	Scott J. McKay Wolas	Hunton & Williams allegedly waited 1½ years after one associate complained about Wolas' billing practices before investigating. The firm held an internal mini-trial, after which managing partner W. Taylor Reveley III told associates that the firm could not prove "beyond a reasonable doubt" that Wolas had fabricated bills. (Davis 97)

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394. Benjamin Rosenberg, who represented the Fairfax Savings Bank in its malpractice suit against Weinberg & Green, told the judge: "It is amazing how many people knew about the overbilling 'how many lawyers knew about this' and didn't say a word." Jane Bowling, *Counsel Trade Fraud Claims at Close of Weinberg Trial*, DAILY REC., Jul. 12, 1995, at 1.

## APPENDIX J: COMMENTS OF PARTNERS AND CLIENTS

	Name & Alleged Amt. Stolen	Responses of partners and clients to the allegations
1	Edward S. Digges, Jr. \$3.1M	Levin, Digges' former partner, said "I say in the law business, if you don't trust your partner, you ought not to be partners." (Geyelin 89) He continued: "We frankly left management totally in his hands. . . . We trusted him." He concluded that "[I]f we were at fault, it is that we delegated our authority to him. . . . But, in my mind, I don't think that was unreasonable, knowing who he was." (Geyelin 89) Wharton, the other named partner, said "We all felt — at least I did — that the Digges background, both family reputation and money, was such that we never would falter." (Geyelin 89) He said Digges "lived in a different stratosphere from most people, in every fashion. He would not socialize with us. In his background was English Gentry, and I think he fashioned his whole life around that ancestry." (Geyelin 89)
2	Harvey Myerson \$2.5M	When Myerson & Kuhn was in financial trouble, but before it collapsed, some partners remained confident about Myerson. Partner Mark Segall, for example, said "Harvey has no flaws as a lawyer or manager." (Cohen 90) Faith Whittlesey, another partner said, "I think he's the most gifted trial lawyer in the US today." (Cohen 90) A federal investigator said "If there ever was a conscious avoidance of the truth, it was his partners. . . . Because they had a financial interest." (Jensen 92b) Juror Lenora Small, commenting on Myerson's acquittal on charges of stealing from his partners said, "all of them were sharing in the good times and they didn't complain. . . . We thought they had an obligation to ask questions." (Jensen 92a) Jury foreman Gregory Lambert said of Myerson's partners: "None of them gave a s--t as long as they were getting their money." (Jensen 92a)
3	Wilkes "Skip" Morgan \$2.3M	The managing partner at Bronson described Morgan as "seeming to be functioning fine as a lawyer." (Mintz 92)
4	H. Lawrence Fox \$1.62M	One unnamed former partner explained "You can write down your fees and write up your expenses, and the client doesn't get hurt." (Groner 91a) J. Michael McGarry, managing partner of Winston & Strawn, said of Fox's expense fraud: "the scenario we're looking at is close to that." (Groner 91a)

	Name & Alleged Amt. Stolen	Responses of Partners and Client to the Allegations
5	Maureen Walsh \$1.48M	<p>Asked to comment on allegations that Walsh or he himself was overbilling, managing partner James Spiotto said, "We do not comment on these matters, out of respect for clients and other people." (Anderson 94) A firm spokesman reported in October '94 that "Mrs. Fairchild was removed as a partner of Chapman &amp; Cutler by unanimous vote of the partnership earlier this year and the firm has voluntarily contacted all affected clients and amicably resolved all of these matters with each of them." (Stevens 94b)</p> <p>A spokesman for Harris Bank, (which had been overbilled \$1.2 million in 21 matters over 8 years), said "We felt Chapman &amp; Cutler handled the matter appropriately and our relationship with them has not changed. . . . No customer has suffered any financial loss and we are convinced it was an isolated incident." (Stevens 94b)</p>
6	William F. Duker \$1.4M	<p>Michael Ross, a lawyer at Duker's firm, said Duker's partners were "shocked and stunned, to say the least" when they learned of the investigation. (Walsh 97) He said "It's inexplicable and was totally out of character. . . . Bill Duker enjoyed a wonderful reputation as a lawyer." (Walsh 97) Ross noted that "When the law firm learned of the government's investigation, they all made themselves available. . . . There's no continuing investigation. . . . It was a single, isolated instance of wrongdoing." (Walsh 97) An associate commented that "Duker exhorted younger lawyers to keep their meters running late into the evening." (Barrett 97) An associate said Duker was often frustrated that his "subordinates were being excessively cautious in billing for their time." (Barrett 97) An associate joked that if one found a quarter on the floor they should not touch it because it belonged to "Bill." (Barrett 97)</p>
7	William Appler \$1.1M	<p>" 'Everyone was just completely shocked,' recalls Charles Work, the partner in charge of McDermott, Will's Washington outpost. 'It was a deep feeling of betrayal. We were exceptionally angry about it.' " (Murawski 94)</p>

	Name & Alleged Amt. Stolen	Responses of Partners and Client to the Allegations
8	Gary Fairchild \$784T	After Fairchild's misconduct came to light, one partner said "If you told me there was only one honest lawyer out of 476 lawyers here, I would tell you it was Gary Fairchild. . . . He seemed to be perfectly open and above-board. It's like when the kid next door turns out to be an ax murderer." (Margolick 94) One partner said "Somehow, along the way, he lost the ability to distinguish between his personal assets and the assets of the firm." (Dillon 94) Winston & Strawn managing partner James R. Thompson said "His reputation was that of a model of probity and frugality, that's why we were all stunned. But the money is not the point. When we found he had abused the trust of his partners, he was gone." (Margolick 94)
9	Michael X. Morrell \$500T	No comments found in published sources.
10	Webster Hubbell \$482T	When Hubbell resigned as Associate Attorney General because of allegations of billing fraud, Attorney General Janet Reno called Hubbell "a tireless crusader for doing the right thing" and expressed confidence that he had done nothing wrong. (Isikoff 94)
11	James T. Crowley \$385T	After Crowley resigned from Thompson, managing partner Thomas C. Stevens said that "irregularities" in Crowley's billing practices had occurred over at least two years, that six clients had been overbilled, and that "thousands of dollars, rather than hundreds of thousands of dollars" were involved. (Myers 92a) Crowley then became a partner at Reminger & Reminger, whose managing partner, Mario C. Ciano stated that the clients alleged to have been overbilled had gone with Crowley to his new firm. He said the alleged billing fraud was "relatively minor." (Myers 92b) Ciano said Crowley was "known in the business as a lawyer's lawyer." (McCarty 97)

	Name & Alleged Amt. Stolen	Responses of Partners and Client to the Allegations
12	Timothy Flato \$300-400T	Robert Dell, managing partner at Latham, said after Flato left the firm: "When we asked him to resign . . . he acknowledged his mistake. He was very remorseful. . . . It's a bit of a sad day." (Steuart 95a) Partner Randy Bassett said Flato's partners reacted with "shock and dismay" to the allegations. "It is inconceivable why anyone would do something like this. . . . He basically betrayed the trust of his partners and his clients." (Maley 95)
13	Richard Salomon \$254T	One former partner at Mayer, Brown & Platt says "There was a rumor around for years" that Salomon had exaggerated his credentials on his resume. He said Salomon was "a pathological liar . . . [and] the most incredible overbiller." (Nachman 94) Another said: "People hated him. . . . He was obnoxious, abrupt, and didn't treat people well." (Nachman 94) A third partner said Salomon had been tolerated despite his personality because "he generated lots of business." (Nachman 94) One partner who helped investigate Salomon said Salomon's billing fraud was not "rational economic behavior" because his misrepresentation of firm costs did not produce payments directly to him or increase his compensation by the law firm. (Nachman 94)
14	Sherman F. Taub \$225T	Except to confirm the charges against Taub, the Tenzer, Greenblatt firm has made no comment on Taub's behavior. (Adams 94a and 94b)
15	Stanford D. Hess \$110T	Howard Miller, managing partner at Weinberg & Green when Hess was inflating bills, testified in the malpractice trial that he did not know of Hess' billing practices. Hess testified that he told Miller about the billing fraud and that while Hess watched, Miller dictated a memo about it to the accounting department to ensure that additional increments would be added automatically to each billable unit. (Bowling 95b) Berman, CEO of the client bank, was said by a judge who reviewed the matter to have found the scheme "humorous." The judge wrote, "Berman was pleased the firm had overbilled because it created an opportunity for him to recover a substantial amount of money. . . ." (O'Brien 96) <sup>395</sup>

395. Benjamin Civiletti, the head of Venable, Baetjer, and Howard said, commenting on the Hess matter, that

	Name & Alleged Amt. Stolen	Responses of Partners and Client to the Allegations
16	Scott J. McKay Wolas	<p>After the internal investigation was concluded, Hunton &amp; Williams managing partner W. Taylor Reveley, III, told associates that Mr. Wolas was "a sloppy pig, not a dirty rat." (Adams 97)</p> <p>In '96, after Wolas left the firm, the managing partner denied that Wolas departure was triggered by discovery of misconduct. "Scott took a leave of absence after he advised us that he had to spend more time on family business matters," and "later in the summer, we mutually agreed his withdrawal from the firm would be appropriate, but it was for other reasons." (Davis 96a)</p> <p>Gordon F. Rainey, Chairman of H &amp; W, issued a statement in response to lawsuits against the firm relating to Wolas' investment activities. It said, "there is no basis for the claims against our law firm . . . [which] did not know about . . . [and] in no way authorized [Wolas'] outside investment activities. We first learned of the allegations against him after he resigned from the firm in July 1995. We immediately reported the allegations to the authorities. . . ." (Statement 96)</p>

#### APPENDIX K: PROFESSIONAL AND PERSONAL CONSEQUENCES TO THE LAWYERS

	Name & Alleged Amt. Stolen	Impact of Billing Fraud on Relationship to Firm, Subsequent Employment, and Other Consequences
1	Edward S. Digges, Jr. \$3.1M	<p>The firm severed relations with Digges in March of 1989 and then renamed the firm Wharton, Levin &amp; Ehrmantraut. (Geyelin 89) An involuntary bankruptcy petition was filed against Digges in the District of Maryland in 1989. As of 1997, the bankruptcy case was still pending.<sup>396</sup></p>

large firms should have "high standards of morality and accuracy. . . . It casts a terrible aspersion on the entire profession when one of those [firms] that should demonstrate leadership is found to have feet of clay." Sandra Torry, *Decision Exposes the Pitfalls of Padding Legal Bills*, WASH. POST, Sept. 11, 1995, at B7.

396. Case No. 89-52272.



	Name & Alleged Amt. Stolen	Impact of Billing Fraud on Relationship to Firm, Subsequent Employment, and Other Consequences
2	Harvey Myerson \$2.5M	Myerson initially was sent to a minimum security facility in Florida. After a year he was transferred to a higher-security prison in Michigan. Myerson reportedly had obtained contraband Cuban cigars and cash, and when he was supposed to be working in the prison law library he was sometimes drafting documents for his appeal. He apparently irritated both inmates and guards by his frequent assertions that his ties to high officials, including deputy White House counsel Vincent Foster, would enable him to obtain a presidential pardon. (Hansen 94) He was released from prison after 3 years and 9 months (his sentence was 4 years and 3 months). Then he then moved to Florida, where he was to report to a probation officer for 3 years. (Adams 97) He bought a \$1.75 million oceanfront house in Key West. His former partner Bowie Kuhn bought a million dollar home in Florida at about the same time. (Buettner) Florida exempts homes from obligations to creditors in bankruptcy proceedings. (Canellos 97)
3	Wilkes "Skip" Morgan \$2.3M	Morgan was fired by Bronson, Bronson & McKinnon in 1992. (Osborne 92)
4	H. Lawrence Fox \$1.62M	Fox resigned from the firm to avoid being fired in 1991. (Groner 91a)
5	Maureen Walsh \$1.48M	Walsh was fired from Chapman & Cutler in May '94. (Goldberg 94) In '95 she moved to Idaho with her three children. (Van Duch & Gately 96) Gary Fairchild withdrew a divorce petition he filed in '93. Walsh's lawyer confirmed in '96 that the couple no longer lives together, but he was unsure of the status of their marriage. (Rooney 96b) Walsh began serving her prison sentence in January '98. (Stephens 97a) After she was released from prison, she returned to Idaho, where she is employed as an office assistant at an architectural firm. (Manson 99)
6	William F. Duker \$1.4M	Duker resigned from Duker, Barrett, Gravante & Markel in the summer of '97. (Walsh 97) He was sentenced to spend 33 months in prison.

	Name & Alleged Amt. Stolen	Impact of Billing Fraud on Relationship to Firm, Subsequent Employment, and Other Consequences
7	William Appler \$1.1M	Appler was fired in March '91 by McDermott, Will & Emery. He became a solo practitioner, renting space at Epstein, Becker & Green. (Murawski 94) He practiced law for 4 more years until his disbarment. (Ponce 96) He has worked as a consultant on FDA matters. (Summit 96) He has an office in D.C. and is a spokesman for the ephedra industry (a drug used in dietary supplements). (USA Today 97)
8	Gary Fairchild \$784T	Fairchild resigned from Winston & Strawn in May '94. Managing partner James Neis described Fairchild's exit from the firm, saying "I told his lawyer if he didn't resign in six hours, I was going to expel him in seven." (E.B. 95) After Fairchild was released from prison, he became a sales executive with Medline Industries, Inc., a former client. (Rooney 96, Bar Talk 96)
9	Michael X. Morrell \$500T	Fired from Akin Gump '92. (Torry 95)
10	Webster Hubbell \$482T	Hubbell reportedly was undeterred from billing fraud by the investigation of his billing practices at the Rose Law Firm. After resigning as Associate Attorney General in 1994, he did consulting work, including lobbying for the LA Department of Airports. City controller Rick Tuttle said Hubbell billed the agency for 80 hours of work. The controller examined records of 50 hours of this claimed service and found that Hubbell had worked less than 7 hours. (Purdum 97) His report said an itemized statement that Hubbell submitted describing the work he did for the agency was "materially false." (Saunders 97) Independent Counsel Kenneth Starr continued to investigate Hubbell, and indicted him twice more on other charges. (Lewis 99) In 97 Hubbell published a book: FRIENDS IN HIGH PLACES: OUR JOURNEY FROM LITTLE ROCK TO WASHINGTON, D.C. He received a \$400,000.00 advance. (Ahrens 97) Hubbell is currently "earning less than \$20,000 a year at the National Center on Institutions and Alternatives in Alexandria, where he works on issues such as seeking prison release for elderly, nonviolent first-offenders." (Ahrens 97)

	Name & Alleged Amt. Stolen	Impact of Billing Fraud on Relationship to Firm, Subsequent Employment, and Other Consequences
11	James T. Crowley \$385T	Forced to resign from Thompson Hine in '92, he became a partner two weeks later at Reminger and Reminger. (Solov 93a) After suspension from practice, Crowley left Reminger, sold his house and purchased a restaurant tavern. In early '97 he separated from his wife and moved into an apartment above the tavern. Crowley shot and killed himself in October, '97. (McCarty 97)
12	Timothy Flato \$300-400T	Flato was forced to resign from Latham & Watkins in January '95 (Steuart 95a) In '96, Flato's attorney stated that "Flato will not be able to seek readmission to the bar for a minimum of 5 years and he is currently struggling to find a new employment niche." (Sllind-Flor 96)
13	Richard Salomon \$254T	In February '94, Salomon was involuntarily placed on personal leave by Mayer, Brown & Platt. He was still being paid as of May '94, pending the outcome of a disciplinary investigation. (Nachman 94)
14	Sherman F. Taub \$225T	Resigned from the firm after allegations of expense fraud. (Adams 94)
15	Stanford D. Hess \$110T	Hess left Weinberg & Green to become a partner at another firm four months before the malpractice suit against W&G went to trial. (Mullaney 94a) He was asked to leave by managing partner Charles O. Monk because of his conduct in representing Fairfax. (Bowling 95b)
16	Scott J. McKay Wolas	Resigned from Hunton & Williams in July '95; he (Davis 96c) at least partially reimbursed his four partner-investors before he disappeared. (Vorobil 96) Wolas is said to have written a 500 page spy novel that he would like to sell. (Davis 96)

**APPENDIX L: LAW FIRM MONITORING SYSTEMS<sup>397</sup>**

	Name & Alleged Amt. Stolen	Accounting/Monitoring Systems in Place in the Firms at the Time the Billing Fraud Occurred and Subsequently
1	Edward S. Digges, Jr. \$3.1M	"Each partner was responsible for his own billing, without review or verification from anyone else at the firm." (Dresser 89) However, "[t]he partners shared equally in the net income of the firm, without regard to source of income or billing levels." (Dresser 89)
4	H. Lawrence Fox \$1.62M	Loren Wittner, a Winston & Strawn partner, said after Fox was convicted, the firm increased its accounting checks and balances. (Stevens 94) Other changes were implemented after Fairchild's billing fraud was discovered. (see below)
6	William F. Duker \$1.4M	Attorneys and paralegals who worked on FDIC and RTC matters submitted their bills to the firm's office manager. She gave them to Duker to review. Duker inflated the hours recorded before sending out bills. No one else in the firm reviewed these bills. (Adams 97)

397. In cases in which information on firm monitoring systems was not available, or where such information was reported in another table, the lawyer's name is omitted from this table.

	Name & Alleged Amt. Stolen	Accounting/Monitoring Systems in Place in the Firms at the Time the Billing Fraud Occurred and Subsequently
8	Gary Fairchild \$784T	About a month before Fairchild's misconduct was uncovered, the firm executive committee elected its first general counsel, who assumed responsibility for malpractice issues, conflicts of interest, and so on. <sup>398</sup> Only accounting personnel had routinely reviewed Fairchild's expense accounts. The billing fraud also was not caught by Arthur Anderson or Ernst & Young, the outside auditors who had reviewed the firm's finances. (Dillon 94) Managing partner James R. Thompson explained that while Fairchild had been managing partner, he was "in charge of the firm's finances. . . . If he submitted an expense voucher and said it was for firm business, there was no one to question it." (Stevens & Woo 94a) After Fairchild's misconduct emerged, Thompson reported that the firm established a "corporate-type system where both Neis and I are in charge, and there's not just one man in control." (Stevens & Woo 94a) Thompson said. "[F]rom now on, nobody is above suspicion." (Dillon 94) He cautioned that "If you go too far in control, you lose the bond of trust. . . . I don't want to sit here night after night looking at fifteen-dollar expense accounts." (Dillon 94)
9	Michael X. Morrell \$500T	DC disciplinary authorities said Akin, Gump "never sought information from Morrell and supervised him poorly or not at all." (Torry 95)
10	Webster Hubbell \$428T	Hubbell used firm checks for less than \$1,000 to pay for personal expenses. Checks under \$1,00 did not require a second partner signature. (Labaton 94b)
12	Timothy Flato \$300-400T	A billing partner reviewed all expense reports at Latham. Flato engaged in expense fraud for 3 years before the partner noticed "something fishy" about Flato's expenses. (Steuart 95)

398. Professor Stephen Gillers of New York University noted that one reason for the creation of a general counsel position would allow a firm to obtain attorney-client privilege protection for some conversations within the firm about issues relating to professional conduct. Amy Stevens, *Lawyers and Clients: Do Big Law Firms Need General Counsel? Yes Says Winston & Strawn*, WALL ST. J., Apr. 1, 1994, at B3.

	Name & Alleged Amt. Stolen	Accounting/Monitoring Systems in Place in the Firms at the Time the Billing Fraud Occurred and Subsequently
13	Richard Solomon \$254T	Solomon's theft was detected 7 years after it began by an internal firm investigation and a subsequent Price Waterhouse review. (Nachman 94)
14	Sherman F. Taub \$225T	Tenzer, Greenblatt allowed partners to "write off" client expenses up to \$1,500 without approval of the billing partner; the firm would pay those amounts. (Adam 94)

#### APPENDIX M: SUBSEQUENT DEVELOPMENTS AT THE LAW FIRMS<sup>399</sup>

	Name, Alleged Amt. Stolen, & Firm Where Fraud Occurred	Subsequent Developments at Law Firm
1	Edward S. Digges, Jr. \$3.1M Digges, Wharton & Levin	The firm now operates as Wharton, Levin, Ehrmantraut, Klein & Nash, with offices in Baltimore and Annapolis. The firm lists clients such as Bridgestone/Firestone, Clorox Corp., Dow Chemical, Lloyds of London, USAir, and others. (Martindale 97)
2	Harvey Myerson \$2.5M Myerson & Kuhn	Myerson & Kuhn filed for Chapter 11 bankruptcy in '89 as a result of financial difficulties, some of which were related to Myerson's billing fraud. (Myerson & Kuhn v. Brunswick 1990) Ultimately some partners agreed to pay creditors \$3.9 million, which represents 22 cents per dollar of debt. (Moses & Lambert 92) Several of Myerson's former partners, often referred to as "Harvey's boys," faced criminal and disciplinary charges. They suffered less serious penalties than Myerson because of cooperation with investigators, expressions of remorse, and because in some cases it was observed that Myerson had bullied them into misconduct. <sup>400</sup>

399. Where information was not available about subsequent developments at a lawyer's firm or has been reported in another table, the name of the lawyer is omitted from the table.

400. For information on Myerson's partners who were disciplined or prosecuted for billing fraud, see Appendix A.

	Name, Alleged Amt. Stolen, & Firm Where Fraud Occurred	Subsequent Developments at Law Firm
3	Wilkes "Skip" Morgan \$2.3M Bronson, Bronson & McKinnon	Bronson closed the Santa Rosa office of the firm, which had been managed by Morgan, and another branch office in Walnut Creek. Other factors contributed to the downsizing, but one partner identified the Morgan scandal as the "most spectacular" of the branch office problems. (Donoghue 95) The firm was dissolved by a vote of the partners in April 1999. The number of lawyers declined from 189 in '92 to about 60 in '99. (Donoghue 95, Livingston 99)
4	H. Lawrence Fox \$1.62M Winston & Strawn	Fox had headed a group at Winston & Strawn that handled transactions involving waste disposal. The remainder of the group left the firm in '92 to go to Verner Lipfert. This move was said to be unrelated to Fox's departure. (Waste 92)
5	Maureen Walsh \$1.48M Chapman & Cutler	In the early '90s Chapman & Cutler had about 230 lawyers; by February '96 that number dropped to 180 lawyers. (Van Duch & Gately 96) 17 associates were laid off in March of '95. (Frienkel 95) A firm spokesman said "We don't see any connection" between the attrition and the Walsh matter. (Frienkel 97)
6	William F. Duker \$1.4M Duker, Barrett, Gravante & Markel	The law firm changed its name to Barrett & Gravante, (Walsh 97) and has offices in Florida and New York. (Martindale 97)
10	Webster Hubbell \$482T The Rose Law Firm	One firm client commented that "the Web Hubbell thing creates in the minds of people whether that was an isolated incident or something that went on regularly." (Weisskopf & Schmidt 94) Another client who used to retain the Rose Law Firm as local counsel in Arkansas has given his business to other firms claiming "why buy a problem when you don't need to?" (Weisskopf & Schmidt 94)

	Name, Alleged Amt. Stolen, & Firm Where Fraud Occurred	Subsequent Developments at Law Firm
12	Timothy Flato \$300-400T Latham & Watkins	Apparently the Flato matter had little negative impact on Latham & Watkins' fortunes. It was anticipated that "Flato's failings will have little or no impact on the firm's extremely healthy bottom line." (Rauber 96)ed The firm added thirty attorneys during '96 and produced \$300 million in revenue in 95 with 259 partners. (Rauber 96)
14	Sherman F. Taub \$225T Tenzer, Greenblatt, Fallon & Kaplan	One client of Tenzer, Greenblatt, Beryl Zyskind, fired the law firm because of Taub's departure. He was Taub's brother-in-law. At the time he fired the firm, he owed \$1 million in legal fees. (Adams 94)
15	Stanford D. Hess \$110T Weinberg & Green	Weinberg & Green was harmed by the Fairfax malpractice suit and some other suits against it during the same period. James Carbine, former head of the litigation department, who investigated the Hess matter, left in August 1996, saying "Everybody connected with Weinberg & Green has been adversely affected." (Hyman 96) In '95-96 the firm was "aggressively downsized," "shrinking to about 75 lawyers from as many as 120." (Hyman 96) In 99 the firm merged with Saul, Ewing, Remick and Saul. (Conversation with W & G partner Deborah Shortridge.)

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